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Supreme Court of the United States

OCTOBER TERM, 1955

No. 616 76

THE LEITER MINERALS, INC., PETITIONER,

vs.

UNITED STATES OF AMERICA, ET AL.

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT**

PETITION FOR CERTIORARI FILED JANUARY 9, 1956

CERTIORARI GRANTED FEBRUARY 27, 1956

SUPREME COURT OF THE UNITED STATES

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INDEX

	Original	Print
Record from the United States District Court for the Eastern District of Louisiana	1	1
Complaint	1	1
Motion of United States for preliminary injunction	20	17
Affidavit of George Blue	20	17
Motion of United States for temporary restraining order	22	18
Affidavit of George Blue	23	19
Exceptions in 3282 from 25th Judicial Dis- trict Court, Parish of Plaquemines, an- nexed to foregoing affidavit	24	21
Judgment on exceptions (omitted in print- ing)	27	
Temporary restraining order	33	22
Motion of defendant to continue hearing on motion for preliminary injunction and order that tempo- rary restraining order remain in full force and effect	34	23
Motion of Leiter Minerals to dismiss, etc.	36	25
Answer of defendant, Allen L. Lobrano	38	26

JUDD & DEFWELLER (INC.), PRINTERS, WASHINGTON, D. C., MAY 15, 1956

Record from the United States District Court for the
Eastern District of Louisiana—Continued

	Original	Print
Answer of defendant, The California Company	39	27
Motion to file affidavits on behalf of United States	40	28
Affidavit of Charles R. Blomberg and Elmer D. Haymon	40	28
Affidavit of John H. Sutherland	44	31
Affidavit of L. E. Scott	46	32
Operating agreement of Frank J. Lobrano (omitted in printing)	47	
Operating agreement of Allen L. Lobrano (Serial No. BLM-F.W.-013045)	56	33
Clerk's note re operating agreements	62a	42
Operating agreement of Allen L. Lobrano (Serial No. BLM-F.W.-013046) (omitted in printing)	63	
Operating agreement of Allen L. Lobrano (Serial No. BLM-F.W.-013047) (omitted in printing)	70	
Hearing on application for preliminary injunction, etc., and submission	77	43
Proceedings on application for preliminary injunction; on motion of defendant, Leiter Minerals, Inc., to dismiss or abate; on motion of defendant, Leiter Minerals, Inc., to dissolve temporary restraining order	78	44
Appearances	78	44
Offers in evidence	79	44
Agreement for the purchase of lands (U.S. 1)	108	62
Grant of preliminary use and occupation (U.S. 2)	117	70
Ratification of option contract (U.S. 4)	120	72
Affidavits and copy of deed (U.S. 5)	122	74
Lease of oil and gas lands from the United States to Frank J. Lobrano (U.S. 6) (omitted in printing)	132	
Lease of oil and gas lands from the United States to Allen L. Lobrano (U.S. 7)	147	84
Schedule "A"—Rents and royalties	160	99
Lease of oil and gas lands from the United States to Allen L. Lobrano (U.S. 8) (omitted in printing)	162	
Lease of oil and gas lands from the United States to Allen L. Lobrano (U.S. 9) (omitted in printing)	177	
Copy of complaint filed in 25th Judicial District Court (U.S. 15)	192	101
Deed from Thomas Leiter to the United States (omitted in printing)	205	

Record from the United States District Court for the
Eastern District of Louisiana—Continued

Proceedings on application for preliminary injunction; on motion of defendant, Leiter Minerals, Inc., to dismiss or abate; on motion of defendant, Leiter Minerals, Inc., to dissolve temporary restraining order—Continued

	Original	Print
Deed dated October 28, 1943 from Thomas Leiter to Humble Oil & Refining Co.	214	111
Deed, or act of retransfer, dated November 18, 1952, by Humble Oil and Refining Co., to Thomas Leiter	221	118
Deed dated November 24, 1952 from Thomas Leiter to The Leiter Minerals, Inc.	229	125
Act of confirmation, ratification and conveyance by Thomas Leiter to The Leiter Minerals, Inc., dated December 26, 1952	239	133
Exceptions filed in 25th Judicial District Court (U.S. 15b)	249	143
Judgment on exceptions	252	145
Extract from minutes of Court	261	152
Opinion, Skelly, J.	262	163
Order denying motion of defendant, the Leiter Minerals Inc., to dismiss, etc.	277	164
Notice of appeal	278	165
Cost bond (omitted in printing)	279	
Designation of record	280	165
Motion to stay proceedings pending appeal	281	167
Answer to motion to stay proceedings	284	168
Hearing on motion to stay proceedings	285	169
Order granting motion to stay proceedings	286	169
Motion and order transmitting exhibits in original	287	171
Clerk's certificate (omitted in printing)	288	
Supplemental transcript of record	289	171
Exhibit 16—Agreement between Thomas Leiter and Humble Oil & Refining Company	290	176
Proceedings in the United States Court of Appeals for the Fifth Circuit	298	176
Argument and submission	298	176
Opinion, Borah, J.	299	176
Judgment	306	
Petition for rehearing (omitted in printing)	307	
Order denying petition for rehearing	315	181
Clerk's certificate (omitted in printing)	316	
Order allowing certiorari	317	182

[fol. 1]

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF LOUISIANA,
NEW ORLEANS DIVISION**

No. 4379 Civil Action

UNITED STATES OF AMERICA,

versus

THE LEITER MINERALS, INC., ET ALS.

COMPLAINT—Filed March 17, 1954

[fol. 2] The United States of America, by George Blue, United States Attorney for the Eastern District of Louisiana, acting under the authority of the Attorney General, complains of The Leiter Minerals, Inc., defendant, and alleges as follows:

I

The defendant, The Leiter Minerals, Inc., is a corporation organized and existing under the laws of the State of Louisiana. Jurisdiction is predicated upon Section 1345 of Title 28 of the United States Code (28 U. S. C. A. § 1345).

II

On December 21, 1938, the United States of America purchased and acquired from Thomas Leiter, by warranty deed recorded on December 28, 1938, in C. O. B. 92, folio 468 of the records of Plaquemines Parish, Louisiana, the following described property situated in Plaquemines Parish, Louisiana:

Part of the fractional Southeast Quarter (frl. SE $\frac{1}{4}$) of fractional Section Ten (10); part of the Southeast Quarter of the fractional Northeast Quarter (SE $\frac{1}{4}$ Frl. NE $\frac{1}{4}$) and part of the South one-half (S $\frac{1}{2}$) of fractional Section Eleven (11); part of the North one-half (N $\frac{1}{2}$) and all of the South one-half (S $\frac{1}{2}$) of Sec-

tion Twelve (12); all of fractional Section Thirteen (13) lying Northwest of Main Pass; all of Section Fourteen (14); part of the North one-half ($N\frac{1}{2}$) and all of the South one-half ($S\frac{1}{2}$) of Section Fifteen (15); part of the Southeast Quarter of the Northeast Quarter ($SE\frac{1}{4} NE\frac{1}{4}$), part of the Southwest Quarter of the Northwest Quarter ($SW\frac{1}{4} NW\frac{1}{4}$), and part of the South one-half ($S\frac{1}{2}$) of fractional Section Sixteen (16); part of the Southeast Quarter ($SE\frac{1}{4}$) of the fractional Northeast Quarter ($NE\frac{1}{4}$), and part of the Southeast Quarter ($SE\frac{1}{4}$) of fractional Section Seventeen (17); part of the North one-half ($N\frac{1}{2}$), and [fol. 3] all of the fractional South one-half ($S\frac{1}{2}$) of fractional Section Nineteen (19), lying Northeast of the 40 arpent Line; part of the North one-half ($N\frac{1}{2}$), and all of the Southeast Quarter ($SE\frac{1}{4}$) of Section Twenty (20); all of Section Twenty-one (21); all of section Twenty two (22) all of the North one-half ($N\frac{1}{2}$), and all of the fractional South one-half ($S\frac{1}{2}$) of fractional Section Twenty-three (23), lying Northwest of Main Pass; all of fractional Section Twenty-four (24) lying Northwest of Main Pass; all of fractional Section Twenty-six (26), lying Northwest of Main Pass; all of Section Twenty-seven (27); all of Section Twenty-eight (28); the fractional Northeast Quarter ($NE\frac{1}{4}$) of fractional Section Thirty (30), lying Northeast of the 40 arpent Line; the fractional West one-half of the Northeast Quarter ($W\frac{1}{2} NE\frac{1}{4}$) and the fractional Northwest Quarter ($NW\frac{1}{4}$) of fractional Section Thirty-two (32), lying Northeast of the 40-Arpent Line; the East one-half ($E\frac{1}{2}$), the East one-half of the West one-half ($E\frac{1}{4} W\frac{1}{4}$), and the Southwest Quarter of the Southwest Quarter ($SW\frac{1}{4} SW\frac{1}{4}$), of Section Thirty-three (33); the West one-half ($W\frac{1}{2}$), and the fractional East one-half ($E\frac{1}{2}$) of fractional Section Thirty-four (34) lying Northwest of Main Pass: all of the above described lands being in Township Twenty (20) South, Range Nineteen (19) East, of the St. Helena Meridian.

Part of fractional Section Seven (7), lying Northwest of Main Pass, and all of the fractional North one-half ($N\frac{1}{2}$) of fractional Section Eighteen (18)

lying Northwest of Main Pass, all in Township Twenty (20) South, Range Twenty (20) East, of the St. Helena Meridian.

All of Fractional Section Three (3) lying Northwest of Main Pass; all of fractional Section Four (4) lying Northeast of the 40-Arpent Line; and fractional Section Nine (9) lying Northeast of the 40-Arpent Line and Northwest of Main Pass: all in Township Twenty-one (21) South Range Nineteen (19) East, of the St. Helena Meridian.

All of the above described lands being bounded on the Southwest in part by the 40-Arpent Line, or the Northeast boundary of the Radial Sections, bounded [fol. 4] on the southeast in part by the northwest or left bank of Main Pass, and bounded on the north by the south boundary of lands now or formerly owned by the Grand Prairie Levee District and being more particularly described as follows:

Beginning at the Northwest corner of fractional Section 19, T 20 S. R 19 E, thence S $0^{\circ} 01'$ E 44.15 chs. to a point on the 40-Arpent Line, thence S $42^{\circ} 47'$ E 5.94 chs., thence S $41^{\circ} 23'$ E 13.95 chs., thence S $40^{\circ} 14'$ E 13.95 chs., thence S $37^{\circ} 27'$ E 13.11 chs. to the intersection of the division line between fractional Sections 19 and 30, T 20 S, R 19 E, with the 40-Arpent Line, thence East 9.76 chs. to the quarter corner between fractional Sections 19 and 30, T 20 S, R 19 E, thence South 12.19 chs. to the 40-Arpent Line, thence S $40^{\circ} 23'$ E 13.12 chs. thence S $42^{\circ} 58'$ E 5.48 chs., thence S $42^{\circ} 58'$ E 8.47 chs., thence S $44^{\circ} 23'$ E 10.68 chs. to the intersection of the center line of Section 30 T 20 S. R 19 E with the 40-Arpent Line, thence East 14.48 chains along the center line of said Section 30 to the Southeast corner of the NE $\frac{1}{4}$ of said Section 30, T 20 S, R 19 E, thence North 40 chs. to the Southeast corner of fractional Section 19, T 20 S, R 19 E, thence North 40 chs. to Northeast corner of the SE $\frac{1}{4}$ of said fractional Section 19 T 20 S, R 19 E, thence East 40 chs. to the center of Section 20, T 20 S, R 19 E, thence South 40 chs. to the Quarter corner between Section 20 and fractional Section 29, T 20 S, R 19 E, thence East 40 chs. to the Northeast corner of Frac-

tional Section 29, T. 20 S, R. 19 E, thence South 80
 chs. along the division line between Section 28 and
 fractional Section 29, T 20 S, R 19 E, to the southeast
 corner of fractional Section 29, T 20 S, R 19 E, thence
 East 20 chs. along the division line between Sections
 28 and 33, T 20 S, R 19 E, thence South 60 chs. to the
 Northeast corner of the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 33,
 T 20 S, R 19 E, thence West 20 chs. to the NW corner
 of SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Section 33, T 20 S, R 19 E,
 thence S 0° 01' W 20 chs. to the Southwest corner of
 said Section 33, T 20 S, R 19 E, thence South 6.24 chs.
 to a point on the 40-arpent Line, thence S 32° 00' E
 11.18 chs., thence S 32° 00' E 14.00 chs., thence S 32°
 00' E 14.00 chs., thence S 32° 00' E 14.00 chs., thence
 [fol. 5] S 32° 00' E 14.00 chs., thence S 28° 00' E 13.97
 chs., thence S 25° 00' E 4.93 chs., thence S 25° 00' E
 9.07 chs., thence S 25° 00' E 14.00 chs., thence S 25° 26'
 E 14.00 chs., thence S 27° 00' E 14.00 chs., thence S 27°
 00' E 10.99 chs., to the intersection of the 40-Arpent
 Line with the left bank of Main Pass, thence down the
 left bank of Main Pass with its meanders thereof 22.7-
 chs. to the point of intersection of the division line be-
 tween fractional Sections 9 and 10, T 21 S, R 19 E lying
 Northwest of Main pass with the left bank of Main
 Pass, thence North 34.68 chs. to the Southeast corner of
 fractional Section 4, T 21 S, R 19 E, thence East 14.98
 chs. along the division line between fractional Sections
 3 and 10, T 21 S, R 19 E, lying Northwest of Main
 Pass, to the left bank of Main Pass, thence down the
 left bank of Main Pass with its meanders thereof 157.71
 chs. to the intersection of the division line between
 fractional Sections 34 and 35, T 20 S, R 19 E, lying
 Northwest of Main Pass, with the left bank of Main
 Pass, thence North 16.37 chs. to the Southeast corner
 of Section 27, T 20 S, R 19 E, thence East along the
 division line between fractional Sections 26 and 35,
 T 20 S, R 19 E, lying Northwest of Main Pass, 14.41
 chs. to the left bank of Main Pass, thence down the
 left bank of Main Pass with its meanders thereof 241.07
 chs. to the intersection of the division line between
 fractional section 13 T 20 S, R 19 E and fractional
 Section 18, T 20 S, R 20 E, lying Northwest of Main

Pass, with the left bank of main Pass, thence north 11.93 chs. along said division line to the Southeast corner of the NE $\frac{1}{4}$ of said fractional Section 13, T 20 S, R 19 E, thence East 14.49 chs. along the center line of fractional Section 18 T 20 S, R 20 E to the left bank of Main Pass, thence down the left bank of Main Pass with its meanders thereof 106.38 chs. to an inch and a quarter (1 $\frac{1}{2}$ ") iron pipe embedded in a terra cotta pipe, and supported by a concrete base marked "2" and a U.S.B.S. standard concrete post marked "22, R 20 E, T 20 S., S. 7, SMC 1936" and situate on the left bank of Main Pass in the eastern boundary of fractional Section 7, T 20 S, R 19 E, Northwest of Main Pass, from which iron pipe U.S.C. & G.S. triangulation station "Main" bears S 23° 22' W 25.73 chs. distant, and also from said iron pipe, the intersection of the line between fractional Sections 7 and 18, T 20 S, R 20 E bears South 19° 17' W 57.84 chs. [fol. 6] distant; thence from said iron pipe and passing within said fractional Section 7, T 20 S, R 20 E, N 13° 53' W 10.63 chs., thence N 45° .08' W 10.91 chs., thence N 72° 09' W 12.21 chs., thence S 56° 14' W 6.85 chs., thence S 33° 01' W 6.90 chs., thence N 77° 45' W 15.99 chs., thence S 74° 36' W 5.83 chs., thence S 74° 31' W 8.06 chs. to a point on the division line between fractional Section 7, T 20 S, R 20 E and Section 12 T 20 S, R 19 E, thence passing within Section 12, T 20 S, R 19 E, S 74° 31' W 3.73 chs., thence S 34° 38' W 10.73 chs., thence S 71° 28' W 3.62 chs., thence N 65° 17' W 26.26 chs., thence S 78° 36' W 11.04 chs., thence S 78° 18' W 2.03 chs., thence N 42° 49' W 5.20 chs., thence S 75° 49' W 26.12 chs., thence S 39° 55' W 2.16 chs., to a point on the division line between fractional Section 11 and Section 12, T 20 S, R 19 E, thence passing within said fractional Section 11, T 20 S, R 19 E S 39° 55' W 15.39 chs., thence S 10° 43' W 13.98 chs., thence N 88° 59' W 14.01 chs., thence S 44° 28' W 24.58 chs., thence S 86° 36' W 22.94 chs., thence N 83° 28' W 8.50 chs., thence S 59° 27' W 5.79 chs., to a point on the division line between fractional Sections 10 and 11, T 20 S, R 19 E, thence passing within said fractional Section 10, T 20 S, R 19 E S 59° 27' W 13.82 chs., thence S 67° 01' W

14.56 chs.; thence S 67° 02' W 2.06 chs. to a point on the division line between fractional Section 10 and Section 15 T 20 S, R 19 E, thence passing within said Section 15, T 20 S, R 19 E S 67° 02' W 0.16 chs., thence S 66° 55' W 8.76 chs., thence S 40° 03' W 28.64 chs., thence S 75° 16' W 23.94 chs., thence S 20° 27' W 7.30 chs., to a point on the division line between Section 15 and fractional Section 16, T 20 S, R 19 E, thence passing within fractional Section 16, T 20 S, R 19 E S 20° 27' W 2.70 chs., thence S 20° 52' W 6.81 chs., thence S 41° 43' W 21.86 chs., thence N 50° 29' W 22.39 chs., thence N 86° 26' W 13.74 chs., thence N 86° 18' W 14.98 chs., thence N 61° 06' W 19.05 chs. to a point on the division line between fractional Sections 16 and 17, T 20 S, R 19 E, thence passing through said fractional Section 17, T 20 S, R 19 E, N 61° 06' W 6.66 chs.; thence S 58° 15' W 18.82 chs., thence S 18° 15' W 21.63 chs., thence S 17° 27' W 2.54 chs., thence S 18° 28' W 6.16 [fol. 7] chs., thence S 33° 01' W 7.49 chs. to a point on the division line between fractional section 17 and Section 20, T 20 S, R 19 E, thence passing within said Section 20 T 20 S, R 19 E, S 33° 01' W 2.07 chs., thence S 32° 59' W 28.40 chs., thence S 72° 28' W 24.82 chs., thence N 52° 58' W 5.47 chs., to a point on the division line between fractional Section 19 and Section 20, T 20 S, R 19 E, thence passing within said fractional Section 19, T 20 S, R 19 E N 52° 58' W 3.35 chs., thence N 52° 59' W 4.87 chs., thence N 52° 58' W 10.88 chs., thence N 52° 56' W 4.33 chs., thence N 71° 01' W 47.91 chs.; to a point on the division line between Section 18 and fractional Section 19, T 20 S, R 19 E, thence N 89° 56' W 16.02 chs., to the point of beginning, being the northwest corner of fractional section 19, T 20 S, R 19 E.

Also, in addition to the lands described above, a tract of land described as follows:

Beginning at the Southeast corner of the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of fractional Section 29, T 20 S, R 19 E, thence passing within fractional Section 32, T 20 S, R 19 E, south 39.99 chains, thence West 9.67 chains to a point on the 40-Arpent Line, thence N 33° 30' W 3.88 chs.,

thence N 35° 00' W 14.00 chs., thence N 35° 00' W 14.00 chs., thence N 35° 00' W 14.00 chs., thence N 39° 39' W 3.06 chs. to the intersection of the division line between fractional Sections 29 and 32, T 20 S, R 19 E, with the 40-Arpent Line, thence along said division line S 89° 59' E 37.86 chs. to the point of beginning.

All of the above described lands contain in the aggregate 8,711 acres, more or less, all in accordance with map or survey of United States Department of Agriculture, Bureau of Biological Survey, dated November 27, 1937, attached hereto.

III

The aforesaid deed of December 21, 1938 from Thomas Leiter to the United States of America, contained the following stipulations with respect to ownership of the minerals beneath the above described property:

[fol. 8] "The Vendor reserves from this sale the right to mine and remove, or to grant to others the right to mine and remove, all oil gas and other valuable minerals which may be deposited in or under said lands, and to remove any oil, gas or other valuable minerals from the premises; the right to enter upon said lands at any time for the purpose of mining and removing said oil, gas and minerals, said right, subject to the conditions hereinafter set forth, *to expire April 1, 1945*, it being understood, however, that the vendors will pay to the United States of America, 5% of the gross proceeds received by them as royalties or otherwise from all oil or minerals so removed from in or under the aforescribed lands, until such time as the vendors shall have paid to the United States of America the sum of \$25,000, being the purchase price paid by said United States of America for the aforescribed properties.

"Provided, that if at the termination of the ten (10) year period of reservation, it is found that such minerals, oil and gas are being operated and have been operated for an average of at least 50 days per year during the preceding three (3) year period to commercial advantage, then, and in that event, the

said right to mine shall be extended for a further period of five (5), but that the right so extended shall be limited to an acre of twenty-five acres of land around each well or mine producing, and each well or mine being drilled or developed at time of first extension, to-wit: *April 1, 1945.*

"Provided, that this said right to mine as previously stated shall be further extended from time to time for periods of five (5) years whenever operation during the preceding five (5) year period has been for an average of 50 days per year during this period, and

"Provided that at the termination of the ten (10) year period of reservation, if not extended, or at the termination of any extended period in case the operation has not been carried on for the number of days stated, the right to mine shall terminate, and complete fee in the land become vested in the United States.

[fol. 9] "The reservation of the oil and mineral rights herein made for the original period of ten (10) years and for any extended period or periods in accordance with the above provisions shall not be affected by any subsequent conveyance of all or any of the aforementioned properties by the United States of America, but said mineral rights shall, subject to the conditions above set forth, remain vested in the vendors." (Italics added)

IV

On March 14th, 1935, the United States of America and the executors and trustees of the Estate of Joseph Leiter had entered into an agreement of sale covering this property, and the deed of December 21st, 1938 was executed in pursuance of this prior agreement. Such agreement of sale dated March 14th, 1935 contained stipulations as to mineral ownership identical to those in the later deed of December 21, 1938, and quoted in the preceding paragraph hereof. Between March 14th, 1935 and December 21st, 1938, Thomas Leiter was placed in possession of the subject property as heir of Joseph Leiter, and on October 20th, 1938, he executed an instrument ratifying and adopting in all respects the original agreement of March 14th, 1935.

X

No mineral operations of any kind, as referred to in, or contemplated by, the foregoing stipulations as to mineral ownership, have ever been conducted on said land by either the defendant, The Leiter Minerals, Inc., or by Thomas Leiter, or by any other person acting through or under them.

[fol. 10]

VI

By virtue of the express contractual stipulations contained in the deed of December 21, 1938 from Thomas Leiter to the United States of America as aforesaid, title to the minerals beneath the entirety of the above described property became vested in the United States, on April 1, 1945.

VII

The United States of America has executed the following oil, gas and mineral leases covering and affecting portions of said property:

(1) To Frank J. Lobrano, Serial No. B. L. M.—F. W.—013006 dated March 1, 1949, covering and affecting the following described property:

T. 20 S., R. 19 E. St. Helena Mer. Louisiana,

sec. 28, all;

sec. 32, that portion of fractional Section lying West of a line parallel to and 20 chains West of the East Section line;

sec. 33, all of section except $W\frac{1}{2}$ of $NW\frac{1}{4}$;

sec. 34, all of fractional section.

T. 21 S., R. 19 E.,

Sec. 3, that portion of Section lying West of Main Pass.

sec. 4, all of fractional Section.

sec. 9, all of fractional Section.

containing 2486.00 acres, more or less.

(2) To Allen L. Lobrano, Serial No. B. L. M.—F. W.—013045 dated March 1, 1949, covering and affecting the following described property:

- T. 20 S., R. 19 E., St. Helena Mer. Louisiana,
 sec. 10, that portion of the SE $\frac{1}{4}$ lying South and East of the Leiter Estate Boundary.
 sec. 11, all of Section lying South and East of the Leiter Estate Boundary.
 [fol. 11] sec. 15, all of Section lying South and East of the Leiter Estate Boundary.
 sec. 16, all of Section lying South and East of the Leiter Estate Boundary.
 sec. 17, that portion of the SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ lying South and East of the Leiter Estate Boundary.
 sec. 19, all of Section lying South of the Leiter Estate Boundary.
 sec. 20, E $\frac{1}{2}$ of Sec.; that portion of the NW $\frac{1}{4}$ lying South and East of the Leiter Estate Boundary.
 sec. 21, N $\frac{1}{2}$ of N $\frac{1}{2}$.
 sec. 30, all of fractional Section.

containing 2341.00 acres, more or less.

(3) To Allen L. Lobrano, Serial No. B. L. M.—F. W.—013046, dated March 1, 1949, covering and affecting the following described property:

- T. 20 S., R. 19 E., St. Helena Mer., Louisiana
 sec. 21, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$
 sec. 22, all
 sec. 23, S $\frac{1}{2}$ N $\frac{1}{2}$, frl. S $\frac{1}{2}$;
 sec. 26, all;
 sec. 27, all.

containing 2489.00 acres, more or less.

(4) To Allen L. Lobrano, Serial No. B. L. M.—F. W.—013047, dated March 1, 1949, covering and affecting the following described property:

- T. 20 S., R. 19 E., St. Helena Mer., Louisiana
 sec. 12; all of Section lying South of the Leiter Estate Boundary.

sec. 13, all of fractional Section.

sec. 14, all.

sec. 23, N $\frac{1}{2}$ of N $\frac{1}{2}$.

sec. 24, That portion of Section lying North and West of Main Pass.

T. 20 S., R. 20 E.,

sec. 7, That portion of Section lying South of the Leiter Estate Boundary and West of Main Pass.

sec. 18, That portion of Section lying North and West of Main Pass.

containing 2426.50 acres, more or less.

[fol. 12]

VIII

Under the terms of operating agreements entered into between the aforesaid Allen L. Lobrano and Frank J. Lobrano, mineral lessees of the United States, and The California Company, a corporation organized and existing under the laws of the State of California, the operating rights under the above described mineral leases were granted unto said The California Company.

IX

By authority of the above mentioned oil, gas and mineral leases from the United States of America and the aforementioned operating agreements, The California Company has drilled and completed eighty producing wells on the above described lands and has produced, and is now producing, oil and gas in large quantities. The United States has heretofore received royalty on such production in excess of \$3,500,000.00.

X

Since the date of its acquisition the United States of America has maintained and administered the above described lands as a part of a wildlife refuge, and has been continuously in physical possession of said lands. The United States is also in physical possession of the minerals and mineral rights by virtue of its said possession of the surface as well as by virtue of the mineral operations conducted by its lessees under the authority of the United States mineral leases previously mentioned herein.

The defendant, The Leiter Minerals, Inc., is wrongfully claiming to be the owner of the minerals beneath the above described property, and has caused to be recorded in the Conveyance Records of Plaquemines Parish, Louisiana, the following purported instruments respecting said claim of ownership:

(1) Instrument executed by Humble Oil & Refining Company in favor of Thomas Leiter dated November 18, 1952, recorded in C. O. B. 165, folio 346, releasing, relinquishing and disclaiming mineral rights previously conveyed by Thomas Leiter to Humble Oil & Refining Company by instrument dated October 28, 1943, recorded in C. O. B. 112, folio 479. The said conveyance by Leiter to Humble Oil & Refining Company of October 28, 1943, purported to convey to Humble Oil & Refining Company all of Leiter's rights in the minerals as reserved by Thomas Leiter in his sale to the United States of America on December 21, 1938; and the said act of release, relinquishment and disclaimer by Humble Oil & Refining Company to Thomas Leiter dated November 18, 1952 purports to release, relinquish and disclaim whatever rights were so acquired by Humble Oil & Refining Company from Thomas Leiter.

(2) Instrument executed by Thomas Leiter, acting by and through S. W. Plauche, Jr., in favor of the defendant, The Leiter Minerals, Inc., dated November 24, 1952, recorded in C. O. B. 165, folio 351, by which Thomas Leiter purported to convey to The Leiter Minerals, Inc., by warranty deed, all of the minerals and mineral rights "on, [fol. 14] under, affecting, or that may be connected with," the above described property sold by Thomas Leiter to the United States of America under deed of December 21, 1938.

(3) Instrument executed by Thomas Leiter in favor of the defendant, The Leiter Minerals, Inc., dated December 26, 1952, recorded in C. O. B. 165, folio 358, by which Thomas Leiter purported to ratify and confirm the aforesaid transfer in his behalf by S. W. Plauche, Jr. and to confirm, assign, convey and deliver to the defendant all of the minerals and mineral rights reserved in the deed

from Thomas Leiter to the United States of America dated December 21, 1938.

XII

The defendant, The Leiter Minerals, Inc., has heretofore, on August 13th, 1953, instituted in the 25th Judicial District Court for the Parish of Plaquemines in the State of Louisiana, a certain action against The California Company, a California corporation, and Allen L. Lobrano, a resident of Plaquemines Parish, Louisiana, which suit bears the No. 3282 of the records of said state court and is captioned "The Leiter Minerals, Inc. v. The California Company, et al.". Said suit avers in Article V of the Complaint thereof that The California Company and Allen L. Lobrano purport to hold mineral leases from the United States of America and that said The California Company and Allen L. Lobrano are and have been producing oil, gas and other hydrocarbons in large quantities. The prayer of said suit is that The Leiter Minerals, Inc. be [fol. 15] recognized as "the fee simple, true and lawful owner of all of the oil, gas and minerals, and oil, gas and mineral rights in, on and under the land" described in said petition, which said land is the identical land included under the deed from Thomas Leiter to the United States of America dated December 21, 1938; said state court complaint further prays that The Leiter Minerals, Inc. be recognized as "entitled to the full and undisturbed possession of its said real right, and immovable property, and ordering the defendants, and each of them, to deliver possession of said property to petitioner"; and said state court complaint further prays for an accounting by each of the defendants for all of the oil, gas and minerals which have been taken from the property and for judgment against said defendants for the amount or value of same.

XIII

The defendant, The Leiter Minerals, Inc., has also caused to be filed and recorded in the conveyance records of Plaquemines Parish, Louisiana, a notice of lis pendens in respect to the state court suit described in the preceding article, said notice being dated August 8, 1953, and having

been filed for record on August 13, 1953, in C. O. B. 169, folio 727.

XIV

The United States of America is entitled to have its title in and to the mineral rights beneath the foregoing described property quieted as against any claims or pretensions to same by, or on behalf of the defendant, The Leiter Minerals, Inc.; and the United States of America [fol. 16] is further entitled to have the various instruments described in Article XI above, and the notice of lis pendens referred to in Article XIII above, decreed to be null and void and ordered cancelled from the records as clouds upon the title of said the United States of America.

XV

The United States of America, as owner of the legal title to the property, and being in possession thereof, does not have an adequate remedy at law.

XVI

The aforesaid State Court suit instituted by the defendant, The Leiter Minerals, Inc., in the 25th Judicial District Court for the Parish of Plaquemines, Louisiana, against The California Company and Allen L. Lobrano as holders of mineral leases from the United States of America, is an attempt by the defendant herein to have the title of the United States of America adjudicated upon directly in that proceeding and to wrest possession of the property away from the United States therein, all to the permanent and irreparable injury and detriment of the United States. The mere pendency of said suit constitutes a threat against, and an interference with, the substantive rights of the United States in the property.

XVII

The United States of America shows that it has been and is currently maintaining the lands acquired by it from [fol. 17] Thomas Leiter under the above mentioned deed of December 21, 1938, as an inviolate migratory bird sanctuary; that by the terms of the mineral leases which the

United States has granted affecting said property, which leases are more particularly detailed hereinabove, all of the mineral operations conducted pursuant to said mineral leases have been and are now subject to strict regulation and control so as to constitute a minimum of interference with the purposes and objects of the migratory game refuge.

XVIII

Frank J. Lobrano died on September 9, 1951, and his entire estate is now owned one-half by his widow in community, Mrs. Ethel M. Fontenelle, and one-fourth by each of his minor children, Robert Leo Lobrano and Karen Katherine Lobrano. Mrs. Ethel M. Fontenelle Lobrano is the duly qualified and confirmed natural tutrix, or guardian, of said minor children.

XIX

The following persons are interested on the side of plaintiff and will be affected by the decree to be entered herein:

- (1) The California Company, a California corporation;
- (2) Allen L. Lobrano, a resident of Plaquemines Parish, Louisiana;
- (3) Mrs. Ethel M. Fontenelle Lobrano, a resident of Plaquemines Parish, Louisiana;
- (4) Robert Leo Lobrano, a minor, and a resident of Plaquemines Parish, Louisiana, whose natural tutrix is the aforesaid Mrs. Ethel M. Fontenelle Lobrano;
- [fol. 18] (5) Karen Katherine Lobrano, a minor, and a resident of Plaquemines Parish, Louisiana, whose natural tutrix is the aforesaid Mrs. Ethel M. Fontenelle Lobrano.

Accordingly said persons are named as additional parties defendant in this action.

WHEREFORE, plaintiff, the United States of America, prays that it may have judgment against the defendant, The Leiter Minerals, Inc., as follows:

- (a) Quieting the title of the United States, in and to the minerals and mineral rights beneath the foregoing described land as against any claims or pretensions thereto on the part of the defendant, The Leiter Minerals, Inc.;

(b) Decreeing that the United States has title to said minerals and mineral rights; and that the defendant, The Leiter Minerals, Inc., does not have title to said minerals and mineral rights;

(c) Ordering the cancellation and removal, as clouds upon the title of the United States, of the various instruments more particularly described in Articles XI and XIII of this complaint;

(d) Permanently enjoining the defendant, The Leiter Minerals, Inc., its officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them, from asserting or claiming any right, title, interest, claim or demand in and to the aforesaid minerals and mineral rights;

(e) Permanently enjoining the defendant, The Leiter Minerals, Inc., its officers, agents, servants, employees and [fol. 19] attorneys, and all persons in active concert or participation with them, from prosecuting or attempting to prosecute that certain action heretofore filed by The Leiter Minerals, Inc. in the 25th Judicial District Court for the Parish of Plaquemines, State of Louisiana, entitled "The Leiter Minerals, Inc. v. The California Company, et al.", No. 3282 of the records of said Court.

Plaintiff further prays that pending the final determination of this cause a preliminary injunction issue against the defendant, The Leiter Minerals, Inc., enjoining and restraining said defendant, The Leiter Minerals, Inc., its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them, from prosecuting or attempting to prosecute the aforesaid action filed by said The Leiter Minerals, Inc. in the 25th Judicial District Court for the Parish of Plaquemines, State of Louisiana, entitled "The Leiter Minerals, Inc. v. The California Company, et al.", No. 3282 of the records of said Court.

Plaintiff further prays for such other and additional relief as may be just and proper.

(S.) G. R. Blue, United States Attorney, Eastern District of Louisiana; (S.) M. Hepburn Many, Assistant United States Attorney, Eastern District of Louisiana.

[fol. 20] IN UNITED STATES DISTRICT COURT

MOTION OF UNITED STATES FOR PRELIMINARY INJUNCTION—
Filed March 17, 1954

The United States of America, by George Blue, United States Attorney for the Eastern District of Louisiana, acting under the authority of the Attorney General, moves the Court to grant a preliminary injunction herein against the defendant, The Leiter Minerals, Inc., its officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them, from prosecuting or attempting to prosecute, pending the final determination of this action and until the further order of this Court, that certain action filed by said The Leiter Minerals, Inc. in the 25th Judicial District Court for the Parish of Plaquemines, State of Louisiana, entitled "The Leiter Minerals, Inc. v. The California Company, et al.", No. 3282 of the records of said State Court.

New Orleans, Louisiana, March 17th, 1954.

(S.) G. R. Blue, United States Attorney.

AFFIDAVIT OF GEORGE BLUE ANNEXED TO MOTION

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, a Notary Public in and for the State and Parish aforesaid, personally came and appeared: George Blue, who being first duly sworn, [fol. 21] declared that he is the duly qualified United States Attorney for the Eastern District of Louisiana; that the foregoing complaint on behalf of the United States of America was prepared under his supervision after diligent and careful investigation, and he verily believes all of the allegations to be true; that the United States of America claims to be the owner of the minerals and mineral rights

beneath the land described in the complaint; by virtue of its acquisition of December 21, 1938, therein referred to; that the United States of America is in possession of said minerals and mineral rights under the circumstances alleged in the complaint; that the defendant, The Leiter Minerals, Inc., has filed a suit in the 25th Judicial District Court for the Parish of Plaquemines against the mineral lessees of the United States seeking to have itself decreed to be the owner of said minerals and to take the possession away from the United States therein; that a certified copy of the complaint in said State Court suit is on file in the records of the United States District Court for the Eastern District of Louisiana, under Civil Action No. 4090; that the United States will suffer irreparable injury if any judgment is rendered in said State Court suit as requested by The Leiter Minerals, Inc.; that accordingly a preliminary injunction should be issued herein restraining and prohibiting the further prosecution, or attempted prosecution, of said State Court action.

(S.) George Blue.

Sworn to and subscribed before me this 17th day of March-1954. (S.) M. Hepburn Many, Notary Public.

[fol. 22] • IN UNITED STATES DISTRICT COURT

MOTION OF UNITED STATES FOR TEMPORARY RESTRAINING
ORDER—Filed April 3, 1954

Plaintiff, the United States of America, moves the Court, upon the complaint herein and the affidavits of George Blue, United States Attorney, dated March 17, 1954 and April 2, 1954, for a temporary restraining order against The Leiter Minerals, Inc. its officers, agents, servants, employees, attorneys and all persons in active concert or participation with them, from prosecuting or attempting to prosecute, pending the hearing to be had on plaintiff's application for a preliminary injunction, that certain action filed by said The Leiter Minerals, Inc. in the Twenty-Fifth

Judicial District Court for the Parish of Plaquemines, State of Louisiana, entitled "The Leiter Minerals, Inc. v. The California Company, et al.", No. 3282 of the records of said Twenty-Fifth Judicial District Court for the Parish of Plaquemines.

Plaintiff, the United States of America, further moves that said temporary restraining order be issued forthwith and without notice, on the ground that this court, the United States District Court, has exclusive jurisdiction over the controversy; that since the filing of the complaint herein, the Twenty-Fifth Judicial District Court for the Parish of Plaquemines has overruled all of the exceptions filed by the defendants in that proceeding; that the interest of the United States of America will be seriously prejudiced and immediate and irreparable injury will result if any further action be taken by the plaintiff in said proceeding pending a hearing on the application of the United [fol. 23] States for a preliminary injunction.

New Orleans, Louisiana, April 2, 1954.

(S.) M. Hepburn Many, Asst. United States Attorney.

AFFIDAVIT OF GEORGE BLUE ANNEXED TO MOTION

STATE OF LOUISIANA,
Parish of Orleans:

Before me, the undersigned authority, personally came and appeared: George Blue, who being duly sworn, declared that he is United States Attorney for the Eastern District of Louisiana, and that he executes this affidavit in connection with the application of the United States of America for a preliminary injunction against The Leiter Minerals, Inc., defendant herein;

That on the date of filing the complaint of the United States of America herein, March 17th, 1954, the action instituted by The Leiter Minerals, Inc. in the Twenty-fifth Judicial District Court for the Parish of Plaquemines, more particularly referred to in Article XII of the complaint, was pending on exceptions filed by The California

Company and Allen L. Lobrano, who hold under mineral leases from the United States; that a true and correct copy of such exceptions is annexed hereto and made part hereof:

That on the said date the United States of America filed its complaint herein, March 17th, 1954, affiant dispatched a letter to the Judge of the Twenty-fifth Judicial District [fol. 24] Court for the Parish of Plaquemines, Louisiana, as follows:

"Permit me to inform Your Honor that suit was filed today by the United States in Federal District Court against The Leiter Minerals, Inc., The California Company, Allen L. Lobrano, and the successors of Frank J. Lobrano, seeking to have quieted the title of the United States to the minerals in dispute, and to enjoin The Leiter Minerals, Inc. from further prosecution of the captioned litigation in the 25th Judicial District Court for the Parish of Plaquemines.

"The United States Government is greatly disturbed by the adverse claims that have been made. Because of their pendency in Your Honor's Court it was felt that this would be of interest to you. Additional copies of the pleadings are being prepared and a copy will be furnished you at an early date."

That the said Judge of the Twenty-fifth Judicial District Court for the Parish of Plaquemines, on March 23rd, 1954, overruled the exceptions filed by The California Company and Allen L. Lobrano in said action, a true and correct copy of the ruling of the Twenty-fifth Judicial District Court being annexed hereto and made part hereof.

(S.) George Blue.

Sworn to and subscribed before me this 31st day of March, 1954. (S.) M. Hepburn Many, Notary Public.

EXCEPTIONS IN 3282 FROM 25TH JUDICIAL DISTRICT COURT,
PARISH OF PLAQUEMINES, ANNEXED TO FOREGOING AFFIDAVIT
25TH JUDICIAL DISTRICT COURT, PARISH OF PLAQUEMINES,
STATE OF LOUISIANA

Filed December 23, 1953

No. 3282

THE LEITER MINERALS, INC.

v.

THE CALIFORNIA COMPANY, ET AL.

[fol. 25]

Exceptions

Defendants, The California Company and Allen L. Lo-brano, hereby except to plaintiff's petition on the following grounds:

(1) That defendants are occupying the subject lands solely under the authority of mineral leases executed by the United States of America as lessor, and defendants are entitled to have, and desire to have, their said lessor made a party hereto, and to be themselves discharged herefrom, all in accordance with the provisions of Article 43 of the Code of Practice; but said the United States of America is a sovereign, which has not consented to be sued herein.

(2) Alternatively, and with full reservation of all rights under the preceding exception, that the complaint seeks an adjudication of title adversely to the United States affecting lands held and owned by the United States, and admittedly in the possession of the United States through the defendants as its mineral lessees; as such, it is a suit against the United States, which has not consented to be sued herein.

(3) Alternatively, and with full reservation of all rights under the preceding exceptions, that the United States is a necessary and indispensable party for the following reasons:

(a) Defendants are alleged by the complaint to be in possession as mineral lessees of the United States and the

plaintiff is attempting to obtain against them an adjudication on the title of the United States, without its presence in Court; and no decree respecting such title could be [fols. 26-32] rendered against defendants alone without also vitally and immediately affecting the rights, interest and property of the United States;

(b) Under Louisiana law, where an issue is presented respecting the expiration or non-expiration of a mineral servitude, the conflicting claimants are indispensable parties to such determination, and the United States is here shown by the complaint to be such a claimant;

(c) The complaint shows upon its face that plaintiff's cause of action depends upon the construction, validity and effect of the contract entered into between its predecessor, Thomas Leiter; and the United States, under which Thomas Leiter reserved the mine-als for a limited time; and that the United States now vclaims ownership of the land and minerals under said contract. Accordingly, no decree can be entered herein construing or affecting the said contract without both parties to same being present before the Court.

(4) Alternatively, and with full reservation of all rights under the foregoing exceptions, that plaintiff's petition states no right or cause of action against either or both of said defendants.

WHEREFORE, defendants pray that these exceptions be maintained and that plaintiff's suit be dismissed at its cost; and for all general and equitable relief.

(S.) Milling, Saal, Saunders, Benson & Woodward.

(S.) L. K. Benson, (S.) C. D. Marshall, Attorneys
for Defendants.

[fol. 33] IN UNITED STATES DISTRICT COURT

TEMPORARY RESTRAINING ORDER—Filed April 3, 1954

The Court considering the motion of plaintiff, the United States of America, for a temporary restraining order and it appearing therefrom that there is danger of immediate

and irreparable injury to the interest of the United States before notice of the motion for a temporary restraining order can be served, for the reason that this court may have exclusive jurisdiction of the controversy in the State Court proceeding hereinafter designated; and the exceptions of the defendants in that case having been overruled by the State Court:

It is ordered that defendant, The Leiter Minerals, Inc., its officers, agents, servants, employees and attorneys and all persons in active concert or participation with them be and they are hereby restrained from prosecuting or attempting to prosecute that certain action filed by said The Leiter Minerals, Inc. in the Twenty-fifth Judicial District Court for the Parish of Plaquemines, State of Louisiana, entitled "The Leither Minerals, Inc. v. The California Company, et al.", No. 3282 of the records of said court;

It is further ordered that this temporary restraining order shall expire within ten (10) days after entry unless within said time it is extended or modified by the court.

This order issued at 5:10 o'clock P. M. on this 2nd day of April, 1954.

(S.) J. Skelly Wright, United States District Judge.

[fol. 34] IN UNITED STATES DISTRICT COURT

MOTION OF DEFENDANT TO CONTINUE HEARING ON MOTION
FOR PRELIMINARY INJUNCTION AND ORDER THAT TEMPORARY
RESTRAINING ORDER REMAIN IN FULL FORCE AND EFFECT—
Filed April 6, 1954

On motion of the defendant, The Leiter Minerals, Inc. (denominated "mover" herein), and on suggesting to the Court that mover is filing, contemporaneously herewith (a) a motion to dissolve the temporary restraining order issued herein; (b) a plea in abatement; and (c) a motion to stay this suit, all of which present legal questions directly pertinent to, and involved in, plaintiff's motion for a preliminary injunction; and on further suggesting to the Court that it would be more convenient and expeditious to the parties and to the Court to present the legal questions

involved in plaintiff's motion for preliminary injunction and defendant's motions and plea all at one and the same time; and on further suggesting that it would not be convenient, or possible, for mover's counsel to serve mover's motions and plea in order to have them noticed for hearing on April 7th, 1954, at which time plaintiff's motion for a preliminary injunction has been reset; and on suggesting that since the Judge to whom this matter has been allotted, namely, Honorable J. Skelly Wright, will be engaged continuously in Court sessions in Baton Rouge for a period of three weeks commencing April 12th, 1954, which would prevent the Court from considering the legal questions presented by the respective motions in the event the Court should take said motions under advisement, which it is likely the Court would do; and on further suggesting to the Court that mover agrees, without prejudice to any of its rights, that the temporary restraining order heretofore [fol. 35] issued herein will remain in full force and effect, without the necessity of securing a renewal or an extension thereof, until such time as the Court has determined the plaintiff's right to a preliminary injunction and/or the questions raised by defendant's motions and plea; and on further suggesting that the earliest open date upon which the plaintiff's motion and the defendant's motions and plea can be presented to the Court following April 7th, 1954, is May 12th, 1954:

It is ordered that the plaintiff's motion for a preliminary injunction be continued, and said motion refixed for hearing on May 12th, 1954, with the same effect as if originally set for said last mentioned date; and that defendant's motions and plea be fixed for hearing for the same date.

It is further ordered that the temporary restraining order heretofore issued be, and the same is hereby, ordered to remain in full force and effect, without prejudice to any of the ultimate rights of mover, without the necessity of renewing or extending same.

New Orleans, Louisiana, April 6th, 1954.

(S.) J. Skelly Wright, United States District Judge.

(S.) S. W. Plauche, Jr., S. W. Plauche, Jr., Attorney for Defendant, The Leither Minerals, Inc.

[fol. 36] IN UNITED STATES DISTRICT COURT

MOTION OF LEITER MINERALS TO DISMISS, ETC.—Filed April 6, 1954

Now comes The Leiter Minerals, Inc., named as defendant in the above captioned Civil Action, herein termed "mover", and reserving all of its rights to plead further herein by way of motion, answer or otherwise, moves the Court as follows:

I

To dismiss plaintiff's complaint for failure to state a claim upon which relief can be granted, in that:

(a) This action must be dismissed, or abated, for the reason that jurisdiction of this controversy, and of the property involved herein, has already attached to, and become vested in, the Twenty-fifth Judicial District Court in and for the Parish of Plaquemines, Louisiana, in the said petitory action referred to in plaintiff's complaint, which petitory action bears No. 3282 on the docket of said State Court, and is captioned "The Leiter Minerals, Inc. vs. The California Company, et al." Said suit No. 3282, as is the present action, is a suit *in rem*, or *quasi in rem*. The said State Court has assumed jurisdiction of said suit No. 3282, and jurisdiction over said suit and of the property involved in said suit (which is the same property sought to be directly involved or affected by the present action) attached prior to the filing of the present action. Therefore, this Court does not have, and must relinquish, any further jurisdiction over this action; and this Court [fol. 37] must dismiss this action, or order same abated.

II

Alternatively, to stay any and all further proceedings in this action until the final determination of said suit No. 3282 by the Louisiana State Courts, for the reasons set forth in Paragraph I above; and, still in the alternative, for the further reason that the said pending litigation in said State Court involves questions of State law which

should be determined and decided by the State Courts, in that said determination will provide a binding rule of decision upon this Court, and further said State Court decision may render a decision of Federal constitutional questions unnecessary.

III

To dissolve the temporary restraining order heretofore issued herein, and to deny or overrule plaintiff's motion for a preliminary injunction, for the reasons set forth hereinabove in this motion, and for the additional reason that such injunctive relief must be denied plaintiff under the provisions of Title 28, USCA, Section 2283.

Wherefore, mover prays that this action be dismissed, or abated; alternatively, that this action be stayed pending the final determination of said State Court suit No. 3282; and that the temporary restraining order heretofore issued be dissolved, and plaintiff's motion for a preliminary injunction be denied or overruled.

By mover's attorneys, Plauche and Plauche, By:
s/ S. W. Plauche, Jr.

[fol. 38]

Certificate of Service
(Omitted in Printing)

IN UNITED STATES DISTRICT COURT

ANSWER OF DEFENDANT, ALLEN L. LOBRANO—Filed April 12,
1954

Allen L. Lobrano, made a party defendant herein because of his being interested on the side of plaintiff, avers that the term of the mineral servitude reserved by Thomas Leiter in the sale which he made to the United States of the property described in plaintiff's complaint has expired, and prays that The Leiter Minerals, Inc. may be decreed to be without any rights whatsoever in and to the property described in the complaint; that the various instruments

described in Articles XI and XIII of the complaint be ordered cancelled from the records; that the United States may have all the injunctive relief requested by it in the complaint; and for such other and further relief as may be appropriate.

[fol. 39] (S.) Milling, Saal, Saunders, Benson and Woodward, Attorneys for Allen L. Lobrano, 1122 Whitney Bldg., New Orleans 12, Louisiana.

IN UNITED STATES DISTRICT COURT

ANSWER OF DEFENDANT, THE CALIFORNIA COMPANY—Filed
April 12, 1954

The California Company, made a party defendant herein because of its being interested on the side of plaintiff, avers that the term of the mineral servitude reserved by Thomas Leiter in the sale which he made to the United States of the property described in plaintiff's complaint has expired, and prays that The Leiter Minerals, Inc. may be decreed to be without any rights whatsoever in and to the property described in the complaint; that the various instruments described in Articles XI and XIII of the complaint be ordered cancelled from the records; that the United States may have all the injunctive relief requested by it in the complaint; and for such other and further relief as may be appropriate.

(S.) Milling, Saal, Saunders, Benson and Woodward, Attorneys for The California Co., 1122 Whitney Building, New Orleans 12, Louisiana.

[fol. 40] IN UNITED STATES DISTRICT COURT

(MOTION TO FILE AFFIDAVITS ON BEHALF OF UNITED STATES OF AMERICA—Filed May 19, 1954

On motion of the United States of America, appearing herein through George R. Blue, United States Attorney in and for the Eastern District of Louisiana, and on suggesting to this Honorable Court that in connection with the hearing on the preliminary injunction in these proceedings, now fixed for May 21, 1954, it desires to file at this time:

1. Affidavit dated May 12, 1954 of Elmer D. Haymon and Charles R. Blomberg.
2. Affidavit dated May 17, 1954 of John H. Sutherlin.
3. Affidavit dated May 18, 1954 of L. E. Scott.

It is ordered that the United States be and it is hereby authorized to file the said affidavits at this time.

New Orleans, Louisiana, May 18th, 1954.

(S.) J. Skelly Wright, Judge.

Respectfully submitted:

(S.) G. R. Blue, George R. Blue, United States Attorney.

AFFIDAVIT OF CHARLES R. BLOMBERG AND ELMER D. HAYMON

STATE OF LOUISIANA,

Parish of Orleans:

[fol. 41] Before me, the undersigned authority, personally came and appeared: Charles R. Blomberg and Elmer D. Haymon, who, being duly sworn, declared that each of them is a petroleum engineer employed by The California Company, 1111 Tulane Avenue, New Orleans, Louisiana, and that each has had extensive experience in oil and gas operations; that each of them is familiar with the property in Plaquemines Parish, Louisiana, which is covered and affected by three certain mineral leases executed by the

United States to Allen L. Lobrano and one certain mineral lease executed by the United States to Frank J. Lobrano, all of which property was acquired by the United States through purchase from Thomas Leiter; that The California Company holds the operating rights under these four leases; that said The California Company has drilled and completed eighty oil and gas wells on such property, which are currently producing; and that the royalty heretofore paid to the United States in respect to such production is in excess of \$3,500,000.00;

That the conduct of drilling operations and also the operation of completed oil and gas wells, are attended with numerous hazards, and require a high degree of skill, experience, and proficiency on the part of the operator; that unless proper operating practices are observed, wells may blow out during the drilling process, and even after completion may get out of control; that, specifically, wells can be seriously damaged or even killed by temporary cessation of production or attempted over-production; that the [fol. 42] capacity of the oil bearing structure to produce can be extensively damaged, and portions of it rendered non-productive if proper operating practices are not employed or if any of the contingencies just mentioned should occur; and that it is not possible, due to the very nature of oil and gas rights themselves, to measure with accuracy the amount of such damage and loss which might occur;

That The California Company continually has one or more wells in process of drilling on the aforesaid property which was acquired by the United States from Thomas Leiter; that the average cost of each well on this property is approximately \$160,000.00; that if any of such wells had to be abandoned in process of drilling, even for as short a period of time as forty-eight hours, the existing hole would probably be lost and it would be necessary to commence an entirely new well instead;

That any interruption of production from the wells located on the aforesaid property would result in great and irreparable damage for the following reasons:

(a) Oil wells situated in Main Pass of the Mississippi River, which are currently being produced by The Texas Company as mineral lessee of the State of Louisiana.

would effect drainage of oil from lands covered by the said United States mineral leases;

(b) Oil wells which are now producing oil and water, of which there are a considerable number, would probably be flooded out beyond their ability to produce again, thus causing loss of producible oil;

[fol. 43] (c) Oil would be forced by water drive into the gas cap, thus causing loss of producible oil; and

(d) Many wells would probably become sanded up or loaded up with water, causing considerable expense and delay in placing them back on production;

That the first well on this property was completed in January of 1950, since which time The California Company staff of geologists, petroleum engineers and construction engineers have continuously studied the technical aspects of production from this field and have developed techniques which they consider will result in maximum recovery of oil and gas; that about sixty-five per cent of the wells which are producing oil on the lands purchased by the United States from Thomas Leiter are being operated by a gas injection method, whereby subsurface pressures are maintained in order to effect maximum recovery of producible oil; that the information developed by The California Company and the experience which it has attained in the operation of this particular oil field render it capable of more efficiently drilling and operating such field than any other operator that the whole theory and approach to production employed by The California Company could be gravely interfered with and much potential production lost if a well were to be improperly located on the property, or if the overall scheme of gas injection, as related to production of oil, were interrupted or interfered with; that if possession of this oil field were taken away from The California Company, due to the complicated nature of the operation it would be impossible for even the most experienced and competent operator to continue or re-establish the operation of the field without permanent and irreparable loss.

(S.) Elmer D. Haymon, Charles R. Blomberg.

Sworn to and subscribed before me this 12th day of May, 1954. (S.) Emily Ashmond, Notary Public.

AFFIDAVIT OF JOHN H. SUTHERLIN

STATE OF LOUISIANA,
Parish of Cameron:

Before me, the undersigned authority, personally came and appeared: John H. Sutherlin, who being duly sworn declared that he is presently employed by the United States of America as Refuge Manager of the Sabine Wild Life Refuge, State of Louisiana;

That he was formerly employed by the United States of America as Refuge Manager of the Delta Migratory Waterfowl Refuge, Plaquemines Parish, Louisiana; that in 1936, pursuant to the Grant of Preliminary Use and Occupancy made by the Joseph Leiter Estate to the United States in 1935, he entered upon and occupied, on behalf of the United States, the tract of 8,000 acres, more or [fol. 45] less, in Plaquemines Parish at that time under contract to be sold to the United States by the Leiter Estate; that the purpose of the occupancy was to establish, operate and maintain a wild life refuge; that he actively managed and directed the Refuge from the time of his entry on the lands in 1936 until July of 1938;

That he, together with his assistants, had their headquarters initially at the Leiter Club House which was on these lands at the time the government of the United States of America originally established a refuge as hereinabove set out; that in addition to the posting and patrolling of the area by the United States of America, the boundaries and limits of the tract of land purchased from the Leiter Estate were explored and exactly established by two parties of government surveyors which surveyed and mapped the area during the winter of 1936-1937;

That he was in charge of and personally managed the Delta Migratory Waterfowl Refuge from mid-summer of 1936 until his successor replaced him as manager in July of 1938; that he knows of his own knowledge that during this period the said Refuge was closed to shooting, posted, and patrolled and in all regards operated and known as a wild life refuge of the government of the United States of America; that the United States of America was in com-

plete, sole and exclusive possession of all of said lands; and that the name of the Refuge was later changed to the [fol. 46] Delta National Wildlife Refuge.

(S.) John H. Sutherlin.

Sworn to and subscribed before me this 17th May, 1954.
(S.) Charles A. Riggs, Notary Public.

AFFIDAVIT OF L. E. SCOTT

STATE OF LOUISIANA,

Parish of Orleans:

Before me, the undersigned authority, a Notary Public in and for the State and Parish aforesaid, duly commissioned, and qualified, there came and appeared: L. E. Scott, who being first duly sworn, declared that he is employed by The California Company, 1111 Tulane Avenue, New Orleans, Louisiana; that by virtue of such employment he is familiar with the property purchased by the United States from Thomas Leiter by deed dated December 21, 1938, which property is situated in Plaquemines Parish, Louisiana; that the United States has granted one certain oil, gas and mineral lease to Frank J. Lobrano affecting a portion of such property and three certain mineral leases to Allen L. Lobrano affecting other portions of such property; that he attaches hereto true and correct photographic copies of original signed operating agreements which are contained in the files of The California Company relative [fols. 47-55] to such property, viz.:

(1) Operating agreement between Frank J. Lobrano and The California Company dated February 2, 1949, affecting Lease No. BLM—F. W.—013006;

(2) Operating agreement between Allen L. Lobrano and The California Company dated February 3, 1949, affecting Lease No. BLM—F. W.—013045;

(3) Operating agreement between Allen L. Lobrano and The California Company dated February 3, 1949, affecting Lease No. BLM—F. W.—013046;

(4) Operating agreement between Allen L. Lobrano and The California Company dated February 3, 1949, affecting Lease No. BLM—F. W.—013047.

(S.) L. E. Scott.

Sworn to and subscribed before me this 18th day of May, 1954. (S.) Leon F. Cambon, Notary Public.

[fol. 56] OPERATING AGREEMENT OF ALLEN L.
LOBRANO

No. 817c Operating Agreement

UNITED STATES DEPARTMENT OF THE INTERIOR
Washington, D. C.

Oil and Gas Lease, Serial No. BLM-F.W.-013045, Allen L.
Lobrano, Lessee

Operating Agreement on United States Oil and Gas Lease

This agreement, dated the third day of February 1949, by and between Allen L. Lobrano, whose address is Pointe a la Hache, Louisiana hereinafter called "Lessee", and The California Company whose address is 1818 Canal Building, New Orleans 12, Louisiana, hereinafter called "Operator",

Witnesseth:

Whereas, Lessee has heretofore filed with the Secretary of the Interior, an application for a United States Oil and Gas Lease, bearing Serial Number BLM-F.W.-013045, and covering the following described land situated in Plaquemines Parish, State of Louisiana, that is:

T. 20 S, R. 19 E. St. Helena Mer. Louisiana.

sec. 10, that portion of the SE $\frac{1}{4}$ lying South and East of the Leiter Estate Boundary.

sec. 11, all of Section lying South and East of the Leiter Estate boundary.

sec. 15, all of Section lying South and East of the Leiter Estate Boundary.

sec. 16; all of Section lying South and East of the Leiter Estate Boundary.

sec. 17, that portion of the SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ lying South and East of the Leiter Estate Boundary.

sec. 19, all of Section lying South of the Leiter Estate boundary.

sec. 20, E $\frac{1}{2}$ of Sec.; that portion of the NW $\frac{1}{4}$ lying South and East of the Leiter Estate Boundary.

sec. 21, N $\frac{1}{2}$ of N $\frac{1}{2}$.

sec. 30, all of fractional Section.

containing 2341.00 acres, more or less.

and

Whereas, the parties hereto desire to make the following agreement with respect to the development and operation of the above described land, hereinafter referred to as "said land", for oil and gas;

Now therefore: For and in consideration of the sum of Fifty and No/100 Dollars (\$50.00) paid to Lessee, receipt of which is hereby acknowledged, and in consideration of the performance by the parties hereto of the agreements and covenants hereinafter set forth, the parties hereto agree as follows:

1. This agreement, notwithstanding the date at the beginning hereof, shall become effective at the time of [fol. 57] execution and acknowledgment hereof by Operator, and, when so executed, shall cover and relate to any lease heretofore or hereafter issued pursuant to the application hereinabove referred to, and any renewals, modifications or extensions of said lease, and any lease issued in lieu thereof, and any relief, exchange, consolidated or other character of lease issued as the result thereof to the Lessee for said land, or any part thereof, under any Act of Congress heretofore or hereafter enacted. The term, "said lease", as hereinafter used, shall refer to any such lease hereinabove described.

2. As to said land, Lessee warrants that Lessee is

the sole and absolute owner of said lease, and that said lease is not subject to any prior sale, assignment, operating agreement, royalty, rental, financial burden, restriction, condition or obligation of any kind or character other than those imposed by the United States Government by laws, regulations, or the terms of such lease, and Lessee agrees to protect Operator against any expense, loss or damage arising as a result of any claims or rights asserted by, through or under the Lessee in or to said lease.

3. Operator shall have, and is hereby given, the sole and exclusive right of possession and occupancy of said land under said lease for the purpose of drilling for, mining, extracting, removing, and disposing of all the oil and gas deposits except helium gas in or under said land, and for the purpose of exercising any other rights and privileges afforded by the said lease, subject to the right of Lessee to enter upon said land at all reasonable times for the purpose of inspecting same and the operations of Operator thereof. Operator shall have full and complete supervision, management and control of all operations upon said land during the life of this agreement and said lease.

4. All oil and gas deposits except helium gas produced from said land shall belong to Operator as Operator's full compensation for Operator's expenditures and services in connection with operations under this agreement, subject to the obligations of Operator to pay all royalties due the United States upon any of said land under the provisions of said lease while said land shall remain subject to this agreement.

5. Operator hereby agrees to account for and pay to Lessee, on or before the 20th day of each month, on the sale value or net proceeds received by Operator from oil and gas produced from said land, or, in the event said land is included in any approved co-operative or unit, communitization or other production or development plan, from oil and gas allocated to said land under said plan:

(1) A sum representing the "sale value", as hereinafter defined, of one % of all oil produced from, or

[fol. 58] allocated to, said land and saved and marketed during the preceding calendar month; and

(2) A sum representing one % of the net proceeds received by Operator from the sale of all gas produced from, or allocated to, said land and saved and marketed during the preceding calendar month; provided, that no such payments shall be made or shall accrue upon any oil or gas used for operating, development or production purposes upon said land or any land included therewith in any approved co-operative or unit, communitization, or other production or development plan, or unavoidably lost, and no sums shall be payable upon gas used for recycling or repressuring operations benefiting said land. In the event Operator shall elect to pay compensatory royalties to the United States in lieu of drilling, Operator agrees to pay and Lessee agrees to accept payment for Lessee's share of the sale value of oil and the fair market value at the well of gas computed on the same amount of oil and gas as that on which compensatory royalty to the United States is paid. The term "sale value" as applied to oil under the provisions hereof shall mean: (a) the price for which Operator sells Operator's oil produced from the same field, less any costs of marketing such oil as crude, including costs of handling, transportation to point of sale, treating unmerchantable oil to render it merchantable as crude and other applicable costs; or (b) in the event that Operator does not sell such oil as crude, the fair market value, prevailing in the field where such oil is produced, for oil of like character, gravity, and quality. Lessee agrees to pay or to reimburse Operator for a percentage of any and all taxes levied upon the mineral rights in said land and upon the severance or production or sale of oil and gas extracted therefrom, equivalent to Lessee's percentage of the sale value and net proceeds, as above set forth.

6. No change of ownership in the interests of Lessee hereunder, shall be binding on Operator until after notice thereof to Operator and Operator has been furnished with the written transfer or assignment, or a certified copy thereof, and such change of ownership

shall have received any approval required under any applicable law or regulation.

7. No implied covenants shall be read into this agreement requiring Operator to drill or to continue drilling upon said land, or fixing the measure of diligence therefor. Nothing herein contained shall be deemed to obligate Operator to produce, sell or otherwise dispose of oil or gas from said land.

8. Operator agrees during the term of this agreement and subject to Operator's rights of surrender herein expressly granted that Operator will comply with and perform each and every obligation and requirement of said lease, including the payment of rentals in so far as such obligations and requirements [fol. 59] relate and pertain to said land. Operator agrees to indemnify and hold harmless Lessee from any liability to third parties arising out of operations by Operator on said land. It is expressly understood and agreed that Operator is not hereby assuming any obligations to Lessee in excess of those set forth in the said lease applicable to said land, and any co-operative or unit, communitization, or other production or development plan entered into covering the land included therein; and it is further understood and agreed that Operator shall have the right, from time to time, at Operator's election, acting on Operator's own behalf and as Lessee's Agent and Attorney in Fact, to apply for or take advantage of any drilling, production, rental, or other relief which may be authorized or permitted by any applicable laws, rules or regulations.

9. For the consideration expressed in this operating agreement, Operator shall have and is hereby given the right to terminate this agreement and to surrender all of Operator's rights hereunder at any time or from time to time as to all or any part of said land. Notices of termination and surrender shall be deemed sufficient and binding upon Lessee if made in writing and sent by either regular or registered mail addressed either to Lessee at Lessee's address hereinabove stated, or to Lessee's Agent at Lessee's Agent's address, as stated in paragraph 13 hereof. Provided however, that

if a bond shall have been filed under said lease, in connection with which bond Operator shall have assumed any liability, then Operator may, at its election, give Lessee thirty (30) days' notice of Operator's election to terminate this agreement and its liability in connection with such bond. If within 30 days after mailing of such notice, Lessee has arranged to relieve Operator of all liability in connection with such bond, then Operator shall terminate this operating agreement as above provided. If Lessee has not, within said 30-day period, arranged to relieve Operator of liability under such bond, then Operator shall have and is hereby granted the full and irrevocable power-of-attorney, acting as Lessee's Agent and Attorney in Fact to surrender and relinquish said lease to the United States as to all or any part of said land, without incurring any liability whatsoever to Lessee.

10. Operator shall have the right to remove from time to time from said land all machinery, rigs, piping, casing, pumping stations and other property and improvements belonging to, or furnished by, Operator, provided that such removal shall be completed within a reasonable time after the surrender, forfeiture or other termination of this agreement.

11. Lessee agrees that Lessee will not surrender or relinquish to the United States said land or the oil or gas deposits therein, or any part thereof, or surrender or relinquish said Lease, in so far as the same may affect any of said land, without the consent in [fol. 60] writing of Operator first had and obtained. Lessee also agrees that Lessee will not commit any act which will furnish cause for forfeiture or cancellation thereof and that immediately upon the receipt of any notice or communication pertaining thereto from the United States Government or from any other person, Lessee will transmit such notice or communication, or a copy thereof, to Operator.

12. Neither of the parties hereto shall be liable to the other for loss or damage to property or from the loss of any interest in said lease, or for delay or default in the performance of any obligation hereunder or un-

der any cooperative or unit, communitization, or other production or development plan, when such loss, damage, delay or default is caused by strike, labor difficulty, fire, flood, tornado, act of God, war, or conditions resulting from war, (such as inability to secure men, materials and transportation), or other cause beyond the reasonable control of such party, whether similar to those herein specified or not.

13. Lessee hereby appoints

whose address is

as Lessee's Agent, with full power, in the name and on behalf of Lessee and the successors in interest of Lessee, and of each and every one of them, (a) to receive and receipt for, all payment hereunder (b) to examine said lands and the operations thereon, (c) to grant all consents required from Lessee, (d) to give all notices required to be given by Lessee to Operator, (e) to receive all notices required to be given to Lessee by Operator under this agreement, (f) to execute and deliver division orders concerning, and to act in all matters involving said payments to be made by Operator to Lessee hereunder, and (g) to name and advise Operator of any bank to be used as a depository for any payments to be made hereunder. The power and authority of such Agent shall continue until all of the owners and holders of Lessee's interest in said land shall, in writing, elect another such agent and shall notify Operator, in writing, at Operator's address given above, of the name and address of such new Agent. The delivery of any and all payments by Operator to said Agent or to any bank designated by said Agent and the transaction of any business by Operator with said Agent, which business said Agent may be authorized to transact hereunder, shall be a full acquittance and discharge of Operator of and from any and all liability to Lessee and to the heirs, executors, administrators, representatives and assigns of Lessee, and each of them, for or on account of any such payment or such business. Operator shall not be required to recognize or act upon any orders, directions or requirements of Lessee, and the successors in interest

of Lessee, in any matter or thing concerning which said Agent is authorized to act. All notices to be given to Operator hereunder shall be addressed to Operator at Operator's address hereinabove stated, provided that Operator shall, by notice in writing addressed to Lessee [fol. 61] or to Lessee's Agent, have the right to change such address.

14. Lessee shall not declare the rights of Operator under this agreement forfeited for any cause whatever, unless Lessee shall notify Operator in writing, of the existence and exact nature of the cause of forfeiture and unless Operator shall thereafter (and within ninety (90) days from the service of such notice) fail to commence such action as may be necessary to remedy said cause of forfeiture and thereafter prosecute same with reasonable diligence; provided, however, that no default in the performance of any of the conditions or provisions hereof as to any well or wells on any legal subdivision of land covered by said lease shall affect the right of Operator to continue Operator's possession or operation of any other well or wells situated upon any other legal subdivision of said land. The term, "legal subdivision", as herein used, means a subdivision as established by the United States Land Survey which most nearly approximates in size the area allocated to one well under any approved well-spacing program; provided that if no such program has been approved, said term "legal subdivision", shall mean that parcel of the United States Land Survey upon which such well shall be located, but in no event less than forty (40) acres surrounding such well.

15. Nothing herein contained shall be construed as being in any manner in derogation of any of the terms, conditions or provisions of the Act of Congress under and by virtue of which said lease is issued, or of any regulations of the Department of the Interior of the United States lawfully promulgated thereunder; but, on the contrary, this agreement shall in all particulars be deemed amenable to reformation to eliminate or modify any portions thereof found to be in contravention of the provisions of said Act or such regulations or

against public policy, and, except as to the provisions so eliminated, shall remain and be in full force and effect as so modified.

16. This agreement, unless sooner terminated, as herein provided, shall remain in full force and effect during the entire life of said lease.

17. Lessee agrees that Operator may, as to all or any part of said land, file, enter into, and submit to the Secretary of the Interior a plan or plans acceptable to Operator for the co-operative or unit, communitization, or other production or development plan of the area of which said land is a part, and Lessee, and all parties claiming any interest under or through Lessee, hereby agree to join in and consent to any such plan when requested so to do by Operator. It is expressly understood and agreed that compliance by Operator with the provisions of any such co-operative or unit, communitization, or other production or development plan approved by the Secretary of the Interior shall [fol. 62] be in lieu of, and in full satisfaction of, any obligation required of Operator by this agreement or any modification hereof; and that in case of conflict between the provisions of this agreement and of said plan or plans, the provisions of said plan or plans shall govern and control, and this agreement shall be considered as modified and amended accordingly.

18. It is agreed that Operator may, acting on Operator's own behalf and as Lessee's Agent and Attorney in Fact, take such action as may seem advisable to Operator to secure any renewals, modifications or extensions of the lease which shall be in force and effect at the time this agreement becomes effective, and any lieu, new, relief, exchange, consolidated or other character of lease covering said land or part thereof which may be authorized or permitted as a result of the lease in force at the time this agreement is executed under any Act of Congress heretofore or hereafter enacted, or under any applicable rules and regulations. Lessee hereby agrees to do and perform any act reasonably requested by Operator to assist.

Operator in securing the above. Nothing in this paragraph contained, however, shall deprive Lessee of the right to receive the payments provided to be paid Lessee under the provisions of Paragraph 5 hereof.

19. Operator, in performing development and operations hereunder, shall not discriminate against any employee or applicant for employment because of race, creed, color or national origin, and a provision identical with the foregoing shall be included in all subcontracts made by Operator for the performance of development and operations hereunder.

20. Lessee and Operator hereby consent to a reservation to the United States pursuant to the provisions of the Act of August 1, 1946, (Public Law 585, 79th Congress) of all uranium, thorium, or other materials which are or may be determined to be peculiarly essential to the production of fissionable materials whether or not of commercial value, together with the right of the United States through its authorized agents or representatives at any time to enter upon the land and prospect for, mine and remove same.

21. All of the covenants, stipulations and obligations hereof shall inure to the benefit of and be binding upon the parties hereto, their heirs, administrators, executors, representatives, successors and assigns.

In Witness Whereof, the parties hereto have executed this agreement.

To execution by Lessee:

(S.) A. A. Baigar, 726 Fern St., N. O. 18, La., (S.)
Harris L. Anderson, 316 Ockley Drive, Shreveport,
La., (S.) Allen L. Lobrano, Allen L. Lobrano,
Lessee.

[fols. 62-A-76]

CLERK'S NOTE RE

OPERATING AGREEMENTS

"The following additional operating agreements have not been printed for the reason that they are of like pur-

port to the operating agreement which has just been set forth:

(a) Operating agreement between Frank J. Lobrano and The California Company dated February 2, 1949 (pages 47-55 of the certified transcript);

(b) Operating agreement between Allen L. Lobrano and The California Company dated February 3, 1949 (pages 63-69 of the certified transcript); and

(c) Operating agreement between Allen L. Lobrano and The California Company dated February 3, 1949 (pages 70-76 of the certified transcript).

[fol. 77] IN UNITED STATES DISTRICT COURT

HEARING ON APPLICATION FOR PRELIMINARY INJUNCTION,
ETC. AND SUBMISSION—May 21, 1954

Wright, J:

This matter came on this day for hearing on application for preliminary injunction and on motion of defendant, The Leiter Minerals, Inc., to dismiss or abate and on motion of defendant, The Leiter Minerals, Inc., to dissolve the temporary restraining order.

Present: George R. Blue, M. Hepburn Many, Attorneys for plaintiff; S. W. Plauche, Jr., Attorney for Leiter Minerals, Inc.; Charles D. Marshall, Attorney for The California Co.;

After hearing evidence and argument of counsel on both matters; the matters were submitted and the Court took time to consider.

Counsel to file proposed findings of fact and conclusions of law and any additional memoranda by June 10th, 1954.

J. S. W.

[fol. 78] IN UNITED STATES DISTRICT COURT

Proceedings on Application for Preliminary Injunction; on Motion of Defendant, Leiter Minerals, Inc. to Dismiss or Abate; on Motion of Defendant Leiter Minerals, Inc. to Dissolve Temporary Restraining Order

APPEARANCES:

George R. Blue, Esq., United States Attorney, Post Office Building, New Orleans, Louisiana.

Charles D. Marshall, Esq., Milling, Saal, Saunders Benson & Woodward, Whitney Building, Attorneys for The California Company.

S. W. Plauche, Jr., Esq., Plauche & Plauche, Lake Charles, Louisiana, Attorneys for The Leiter Minerals, Inc.

(The above entitled and numbered matter came up for hearing on this, the 21st day of May, 1954, in the Courtroom, U. S. Post Office Building, New Orleans, Louisiana, The Honorable J. Skelly Wright, District Judge, presiding)

Proceedings

The Court: Is the Government ready?

Mr. Blue: We are ready.

Mr. Marshall: We are ready.

Mr. Plauche: We are ready.

The Court: Assume we will take the motion to dismiss first.

[fol. 79] (Argument by respective counsel on motion.)

The Court: Let's proceed with the merits.

OFFERS IN EVIDENCE

Mr. Plauche: I presume there will be some offerings, because I have been served with affidavits, or at least, copies of the documents, and I should like the record to note our general objections, and in order to save time, I think that

I have an accurate enough list of objections which I see to urge.

Do you intend to make the offerings?

Mr. Blue: Yes.

May it please the Court, it was the Government's intention to file its various exhibits, together with a note of evidence at this time, and may it please the Court, we can list the exhibits numerically, and at that time give counsel an opportunity to note any objections that he wishes to make to the offerings.

Mr. Plache: May I ask counsel—do you propose to offer only that which you have served me with, that is, the note of evidence and the list of affidavits and other items?

Mr. Blue: No, sir.

Mr. Plache: Maybe we'd better proceed as you suggested.

[fol. 80] If your Honor please, in order to avoid duplication, I contacted Mr. Marshall the other day, and in order to avoid photostating the entire record in the Plaquemine-Parish suit at an unnecessary cost, all of that record, duly certified, has been secured by Mr. Marshall or by Mr. Blue, with the exception of the process, I think, or other immaterial items, and I want to be sure that in connection with the motion to dismiss which we have already submitted, that that is offered, because that is our only offering, and I don't want by him going ahead with the motion for preliminary injunction, to waive that offering. I want that understood.

In connection with, and substantiating the defendant's motion, we offer, introduce, and file in evidence the entire record, duly certified, of Suit Number 3282, Twenty-fifty Judicial District Court, entitled The Leiter Minerals, Inc. versus California Company, et al., with the exception of immaterial documents, such as services of process and the like.

Mr. Blue: Your Honor, that was also one of our submissions.

The Court: It will be understood that that offering was in connection with the motion to dismiss.

Mr. Plache: Yes, sir.

Mr. Blue: In connection with our primary case on the motion for a preliminary injunction, we make the follow-

[fol. 81] ing note of evidence and offer the following submissions:

First, identified as "U. S.-1" is a photostatic copy of the Agreement to Purchase of Land Tract Number 6, LB-LA-5-501, executed on March 14th, 1935, by the executors and trustees of the estate of Joseph Leiter, said copy being certified by Albert C. Rissman, Acting Chief, Branch of Lands, Fish and Wildlife Service, U. S. Department of the Interior.

Mr. Plauche: If the Court please, on behalf of The Leiter Minerals, Inc., that offering is objected to for the following reasons: that the document sought to be introduced is unrecorded and is therefore entirely and utterly void as to third persons, including Leiter Minerals, Inc. It is incompetent. It is irrelevant and immaterial. Further, we object to that offering and any other offering except the record, or parts of the record of Suit Number 3282, for the reason that this Court has no jurisdiction and is disabled from proceeding in the present matter. The last objection, I would like to note, is a general one to all of the offerings which shall be made, with the exception of those portions of Suit Number 3282 that counsel may offer.

The Court: It will be so understood.

Mr. Blue: In connection with counsel's objections concerning relevancy, I wish to answer that, your Honor, by saying that the documents offered represent the inception [fol. 82] of the agreement to purchase between the Leiter estate and the United States Government; that the issues in connection with this preliminary injunction are appealable, and, as the Government's case is based upon the validity of its title and the cloud cast thereon by these parties, that the full record should be available to the Court.

Mr. Plauche: I am assuming, and I would suggest to the Court that you take our objections under advisement and let the offerings go in at this time. I don't propose to argue that.

The Court: I want to hear counsel's position.

Mr. Plauche: I have stated my position in the objections, and I don't propose to argue any further now, being content with not waiving any objections that we have urged.

The Court: All right. Let's proceed.

Mr. Blue: The second offering is a photostatic copy of grant of preliminary use and occupancy, executed on October 18th, 1935, by the executors and trustees of the estate of Joseph Leiter. Said copy also being certified by Albert C. Rissman, Acting Chief, Branch of Lands Fish and Wildlife Service, U. S. Department of the Interior. [fol. 83] Mr. Plauche: To which the defendant, Leiter Minerals, Inc., offer the same objections as it did to Item Number 1.

Mr. Blue: Number 3 is photostatic copy of proceedings of the cause "Succession of Joseph Leiter", Number 1319, of the Twenty-fifth Judicial District Court for the Parish of Plaquemines, and consisting more particularly of the following: Petition and exhibit attached thereto; Order thereunder; Oath and bond of Testamentary Executors; Motion and Judgment on Rule to fix Inheritance Tax; Petition for possession filed May 18th, 1938, and Judgment of possession, all duly certified by Honorable Allen L. Lobrano, Clerk of Court, in accordance with the Act of Congress.

Mr. Plauche: Same objections as urged to Item Number 1, with the exception of the objection based on the want of recordation of the document sought to be introduced.

Mr. Blue: Next is a photostatic copy of Ratification of Option Agreement, F. S. A. File No. LB-LA-5-501, Tract Number 6, executed by Thomas Leiter on October 24th, 1938; said copy being duly certified by the Natural Resources Records Branch of the United States Government.

Mr. Plauche: Same objections on behalf of Leiter Minerals, Inc., as to Item Number 1 sought to be introduced.

[fol. 84] Mr. Blue: Number 5 is a photostatic copy of deed with map attached, by and between Thomas Leiter and the United States of America, executed December 21, 1938; which deed was recorded December 28th, 1938, in Conveyance Book 92, Folio 468, of the Parish of Plaquemines; said copy duly certified by Honorable Allen L. Lobrano, Clerk of Court, in accordance with the Act of Congress.

Mr. Plauche: To which no objection is offered, other than the general objections, which your Honor has made general, and the same comments or objections, or restricted

objections, will be made to the following items up to Item Number 14, without the necessity of repetition.

Mr. Blue: Number 6 is a photostatic copy of Oil and Gas Lease Number 013006, BLM, effective as of March 1, 1949, by and between the United States of America, through the Bureau of Land Management, and Frank J. Lobrano; said copy duly certified as of September 22, 1953, by Oscar E. Collins; Chief, Copy Records Section, Bureau of Land Management, U. S. Department of the Interior.

Number 7 is a photostatic copy of Oil and Gas Lease Number 031045, BLM, effective as of March 1, 1949, by and between United States of America, through the Bureau of Land Management, and Allen L. Lobrano; said copy being certified as of September 22, 1953, by Oscar E. Collins; [fol. 85] Chief, Copy Records Section, Bureau of Land Management, U. S. Department of the Interior.

Number 8 is a photostatic copy of Oil and Gas Lease Number 013046, BLM, effective as of March 1, 1949, by and between the United States of America, through the Bureau of Land Management, and Allen L. Lobrano; said copy being certified as of September 22nd, 1953, by Oscar E. Collins; Chief, Copy Records Section, Bureau of Land Management, U. S. Department of the Interior.

Number 9 is a photostatic copy of Oil and Gas Lease Number 013047, BLM, effective March 1, 1949, by and between the United States of America, through the Bureau of Land Management, and Allen L. Lobrano; said copy being certified as of September 23rd, 1953, by Oscar E. Collins; Chief, Copy Records Section, Bureau of Land Management, U. S. Department of the Interior.

Number 10 is the affidavit of L. E. Scott, of the California Company, sworn to and subscribed May 18, 1945, before Leon F. Cambon, Notary Public in and for the Parish of Orleans, State of Louisiana, which affidavit identifies and has attached to it the following documents: Operating agreement between Frank J. Lobrano and the California Company, dated February 2, 1949, affecting Lease No. BLM-F. W.-013006; operating agreement between Allen L. Lobrano and The California Company, dated February 3, 1949, affecting Lease Number BLM-F. W.-013045; Operating agreement between Allen L. Lo-

brano and the California Company, dated February 3, 1949, [fol. 86] affecting Lease Number BLM-F. W.-013046; Operating Agreement between Allen L. Lobrano and the California Company, dated February 3, 1949, affecting Lease Number BLM-F. W.-013047.

May it please the Court, in connection with this offering, this affidavit, a copy thereof has been served upon counsel.

Mr. Plauche: We have made no objection to it other than the general objection.

Mr. Blue: Number 11 is a photostatic copy of proceedings in the cause "Succession of Francis Joseph Lobrano, Jr.," this being Number 2945 of the 25th Judicial District Court, Parish of Plaquemines, State of Louisiana, and consisting more particularly of the judgment dated May 6, 1952, recognizing heirs, sending them into possession, and discharging administratrix, and the supplemental judgment dated December 8, 1953, recognizing heirs and sending them into possession; all of which have been duly certified by Honorable Allen L. Lobrano, Clerk of Court, and in accordance with the Act of Congress.

Number 12 is a photostatic copy of proceedings in re Mrs. Ethel M. Fontenelle, Widow of Francis Joseph Lobrano, Jr., application for tutrixship of the Minors Robert Leo Lobrano and Karen Katherine Lobrano; this being Number 3027 of the Twenty-fifth Judicial District Court, Parish of Plaquemines, State of Louisiana, and consisting more particularly of the following: Petition for promulgation [fol. 87] of inventory, for leave to qualify as tutrix, and for appointment of undertutor; Order and judgment executed thereunder; Oath of tutrix; Oath of undertutor; Letters of tutrixship; all certified by Honorable Allen L. Lobrano, Clerk of Court, in accordance with the Act of Congress.

Number 13 is an affidavit of Elmer Haymon and Charles R. Blomberg, Petroleum Engineers, sworn to and subscribed May 12, 1954, before Emily Ashmoore, Notary Public in and for the Parish of Orleans, State of Louisiana.

Mr. Plauche: My copy of the note of evidence differs by one number, so when I made the previous statement that I would object only generally to the documents up to Item

Number 14, it should be up through Item 13, of their offerings. And on behalf of Leiter Minerals, Inc., objection is made that the subject matter of the affidavits is irrelevant, immaterial, incompetent; and that the general objection is also urged to the offering on the basis that this Court is without jurisdiction and is disabled from proceeding, and also that the matter contained in the affidavits is beyond the pleadings and is also ultra petitionem.

Mr. Blue: Do you wish to be heard on the objections?

Mr. Plauche: I presume we will just continue on.

The Court: Just go on with the merits.

[fol. 88] Mr. Blue: Number 14 is affidavit of John H. Southerland, Refuge Manager of the Sabine Wild Life Refuge of the State of Louisiana, sworn to and subscribed May 17, 1954, before Charles A. Rigg, Notary Public in and for the Parish of Cameron, State of Louisiana.

Mr. Plauche: That offering is objected to, in addition to the general objections, on the grounds it is irrelevant and immaterial.

Mr. Blue: Number 15 is photostatic copy of proceedings in the cause "Leiter Minerals, Inc., versus California Company, et al.," Number 3282 of the Twenty-fifth Judicial District Court, Parish of Plaquemines, State of Louisiana, and consisting more particularly of the following: Petition with exhibits attached thereto; Carbon copy of exceptions filed by the defendant; Judgment on exceptions and opinion of the Honorable Bruce Nunez, Judge; all of the above duly certified by Honorable Allen L. Lobrano, Clerk of Court, in accordance with the Act of Congress.

Mr. Plauche: Does that have an excerpt from the Minutes of Court showing the decision, or does it have just the opinion? Is that the offering that you just made?

Mr. Blue: Yes.

[fol. 89] Mr. Plauche: You don't have a certified copy of the Minutes showing the action of the Court? I do.

If your Honor please, the defendant, Leiter Minerals Inc., expressly makes no objection to the offering, and as stated before, reoffers the same documents in its own behalf in support of its motions, with leave also to supplement the offering by likewise filing a certified copy of the extract of the Minutes of Court showing the action of the Court in overruling the exceptions. I think that would

make it complete, and I will - glad to let you have this to incorporate in your offerings, if it is understood that we are reoffering it also.

Mr. Blue: That is satisfied by stipulation, your Honor.

And, your Honor, in conclusion we offer the entire record, and we offer, introduce and file each of these documents and attachments referred to previously.

The Court: The Court will rule on them after it has had an opportunity to study them.

Mr. Plauche: May I inquire of the Court whether the Court proposes to take the matter under advisement—I presume so, since counsel said he wanted to file some sort of—

The Court: The matter will be taken under submission. [fol. 90] Mr. Plauche: That being so, your Honor, I would like to file a memorandum too. We have introduced a large amount of documentary evidence which we can't possibly expect your Honor to rule on now, to submit the matter of the preliminary injunction upon the memoranda that have been filed, and the supplemental memoranda which will come in, all of which will depend upon how your Honor acts on the defendant's motion, and I don't propose to make any further oral argument at this time, or any discussion of the evidence itself, and it seems it may be preferable to submit on briefs, so your Honor can study the documents and study all the cases involved in this matter.

I offer that only as a suggestion in the interest of expediency.

The Court: What is counsel's position?

Mr. Blue: Your Honor, I feel that the matter is of such grave and serious nature that it is one that requires considerable study, and the records will undoubtedly speak for themselves, both, as to any comments that I might make about a case, or any comments that my worthy colleague may make. As far as the Government's position is concerned, unless you specifically wish to hear argument specifically upon the question of the preliminary injunction, I will accede to that suggestion.

[fol. 91] The Court: Based on counsel's suggestion—

Mr. Marshall: I should like to make a brief statement before we terminate proceedings, if it please the Court.

The Court: We will allow anyone of counsel who wants to make a statement, to make it.

The Court's position is this. I am going to ask counsel for both sides to file proposed findings of fact and conclusions of law by June 10, (I assume that will be sufficient time) together with any additional memoranda either counsel would like to file in support of its position in the motion to dismiss, or in the motion for preliminary injunction. Now, that would be June 10th.

Mr. Plauche: To be served and filed with the Court, and served upon respective opposing counsel.

The Court: Is that sufficient time, June 10th?

Mr. Plauche: That will be time enough.

The Court: Is that sufficient time for the Government?

Mr. Blue: Yes, sir.

The Court: Any counsel that wants to make a statement [fol. 92] can proceed.

Mr. Marshall: I am only making this statement because of the magnitude of the case, and its great importance, and I feel it should not be submitted solely on briefs alone, but that opportunity for oral argument should be afforded in the usual manner.

I should very briefly want to explain to your Honor the position of this mineral lessee of the United States.

I would like to point out to the Court the complete divergence between the two theories which are being urged by the Leiter Minerals, Inc. In the State Court of Plaquemines Parish we were met with the argument that the suit there was not against the United States, that the United States was not involved in any way, that its rights would not be affected, that it was free to bring its own action whenever it chose, and such developments would be welcome by the Leiter Minerals, Inc. in order that it might try out its title against the United States.

Indeed, the brief of the Leiter Minerals filed in the State Court quoted the very language from U. S. versus Lee, the Supreme Court decision which directs the United States to the procedure which is here involved. It says that the United States may file its own bill to quiet title, in aid of which it may have its injunction.

Now we are here. The United States has filed this proceeding, and we find the opposing contention. We find

that there is being urged on this court that after all, the [fol. 93] rights, the title, and the interests of the United States are being involved in the Plaquemines Parish litigation, that they are going to be determined down there, and in fact, that they are so involved that this Court's hands are tied and it is powerless to intervene and assert proper jurisdiction.

Those two arguments are absolutely contradictory.

The case of the United States versus Lee answers the proposition in the very language which was invoked down in Plaquemines Parish, by directing the separate proceedings of this bill to quiet title which the United States has brought. Moreover, the United States versus Lee case only permitted a suit for possession to be filed in the State Court originally, and this suit is a suit to establish title as against the United States, which clearly can't be done under any circumstances.

The California Company drilled its first well on this property in January of 1950. The well was completed. We now have eighty producing oil and gas wells on this land. The average cost of each one of these wells is \$160,000.00. The United States has been paid in royalties from the property already three and a half million dollars. The leases which are offered in evidence show that there is a one-eighth royalty, and the Court may easily calculate that the value of the total production from this property as of this time approximates thirty million dollars. Actually, the maximum potential value of this property is simply enormous.

The California Company has years of experience in the [fol. 94] operation and development of this oil field through years of study. It has brought engineers and geologists and they have developed the techniques of operation of this field which are calculated to produce the maximum amount of recoverable oil. It would be impossible for there to be even a temporary shutdown of the wells in this field without sustaining tremendous loss.

I don't know whether the Court is familiar with the geologic principles involved, but the affidavits which have been offered here will show that due to the nature of the driving forces underground which impel the oil to the sur-

face of the property, wells may not—wells should not be shut down without permanent loss of recoverable oil.

The California Company is operating just about two-thirds of all the oil wells in this field on a gas injection method, whereby gas is injected into the subsurface structures at certain points in order to maintain the pressure underneath the surface, and drive the oil to the surface of the ground. Any interruption of that program would seriously affect the whole potential recovery of oil from this oil field.

The affidavit shows that not even the most experienced and competent operator could be substituted for the California Company, due to the complicated nature of this operation and procedure, without tremendous loss of recoverable oil.

The Court: How is that relevant here? How is your [fol. 95] present argument relevant?

Mr. Marshall: I am developing the principle of irreparable damages.

Now, we haven't the slightest doubt about the fact that the United States Courts are ultimately going to decide the title of the United States, and that the title of the United States is going to be maintained, but we are confronted with the possibility of a temporary eviction for an indeterminate period from this land.

The plaintiff is a corporation which these deeds show, was organized coincidentally with the transfer to it of these claimed mineral rights by Thomas Leiter. That transfer, as the record shows, was made for stock, and we may assume that obviously the Leiter Minerals, the plaintiff corporation in the State Court suit, is wholly unable to respond for any substantial damages, much less the simply enormous damages which would be caused to this property if we would be temporarily evicted as lessees of the United States.

Let us make no mistake about that. The damages of the California Company are the damages of the United States. Every barrel of oil, the potential recovery of which is lost, is a barrel of oil in which the United States would never receive its one-eighth royalty.

Moreover, it is our position that the damage, every damage that the California Company sustains down there,

is recoverable by the California Company from the United States by virtue of its warranty of peaceable possession [fol. 96] against eviction.

It is perfectly clear that the final and ultimate decision on this question must be made by the United States Supreme Court. The purpose of the preliminary injunction is to preserve the status quo until a decision can be rendered.

The California Company, the mineral lessee of the United States, is the one who has developed this property. The investment is all ours, and Leiter Mineral has nothing at stake. It can have its decision on the title on this property more speedily in this Court, and certainly just as speedily, as it could in the State Courts, and moreover, this is the one and only Court which can decide the question finally, because this is the only Court in which the United States is present, and in which the United States will be bound by the decision that is to be rendered.

In closing, I should like to say again what I said previously, in a sentence or two. And that is that the proposal of this motion to stay, to my mind, is so simple that it answers itself.

Plaquemines Parish Courts have no jurisdiction over a suit against the United States, and by seizing the property of the United States, or proceeding against the property of the United States, it cannot lift itself by its own bootstraps and take away the powers of these United States Courts to protect and defend the interests of the United States, which the Constitution imposes the duty on the United States Courts to do.

[fol. 97] I would like to mention again the illustration that I cited to the court about this very building. Let us suppose that an action brought—that an action is brought to try the title to the Post Office Building in the State Court, and we come into this Court, and the objection is made that that Court has acquired such jurisdiction, that the United States Courts are powerless to act. They must sit there and take it and permit the representatives of the United States Government to be evicted, while this Court cannot help itself.

I submit that the proposition answers itself, Your Honor.

Mr. Plauche: I don't care to comment further on the statement of counsel, but I would like, of course, to file supplemental briefs and suggested findings of fact and conclusions of law by the 10th of June.

Mr. Blue: Before we close, we also wish to supplement the previous offerings, and we have issued a subpoena duces tecum to the Humble Oil and Refining Company to produce a copy of a lease or an agreement between Mr. Thomas Leiter and that Company, which is dated October 28, 1943.

Mr. Plauche: Is that an offering you omitted to make?

Mr. Blue: Yes.

[fol. 98] We have one of the counsel from Humble Oil here who can identify this, unless counsel would be willing to stipulate as to its authenticity.

Mr. Plauche: I am not sure I have examined it.

Mr. Janvier: May we have further leave of Court to look through the Humble Oil file and look at this one instrument we expected to supply, before the proceedings are closed?

Mr. Plauche: I don't know anything about that. I would like to look at the instrument. I don't know anything about it. Did you list it in the note of evidence?

Mr. Blue: No, it was not listed.

Mr. Janvier: We weren't certain it would be there.

The Court: The court will consider it offered, subject to the objections.

Mr. Plauche: Will I be furnished with a copy? And subject to any objections I might care later to make after examining it, and, of course, subject to the general objections already made.

Mr. Blue: Certainly.

Mr. Plauche: You will let me have a copy?

Mr. Blue: Yes.

[fol. 99] Mr. Plauche: Is this unrecorded?

Mr. Blue: Yes.

Mr. Plauche: That will be covered in the reservations I have urged.

The Court: You said something about further study of the Humble records—

Mr. Janvier: I would like to ask the Court at this time

for a five minute recess, so we can go over the Humble Oil file. We have never seen them before.

Mr. Blue: May I make this suggestion in connection with our offering; we can examine the Humble Oil file and tender any further offerings to counsel for his examination and objections, and include them in the general offer, notwithstanding the fact that—

Mr. Plauche: That is rather odd.

The Court: Suppose we take a five minute recess.

Court stands at recess.

(Five minute recess.)

(After recess.)

[fol. 100] Mr. Blue: This is the only document that we would like at this time to offer, introduce, and file, which is identified as "U. S. Number 16," it being an agreement between Mr. Thomas Leiter and the Humble Oil and Refining Company, dated October 28, 1943.

Mr. Plauche: It is understood that I am going to be furnished with a copy.

Your Honor has referred my objections to the merits on that document, in addition to the general objections, of course, which we have already noted.

Mr. Blue: I would like the record to also show that in response to the subpoena issued to the Humble Oil and Refining Company, the records requested in the subpoena duces tecum were produced for the Government's inspection.

The Court: And it may be released—

Mr. Plauche: That is the first I heard about it, but I presume that the writ would be recalled and it would be satisfied by the respondent.

The Court: You have taken a photostatic copy of the one document out of the file, which you want, and there is no objection to the fact it is a photostatic copy?

[fol. 101] Mr. Plauche: No, your Honor, I am only assuming, or I guess that is a photostatic copy of the original, which was exhibited to me, and no objection is made to the form of the offering, it being a copy rather than the original. I took it that the offering was of the original, with leave to substitute their copy.

Mr. Blue: That is correct.

Mr. Plauche: And of course, we have no objection, even

if it is the first we knew about it, as far as recalling the writ and considering it satisfied because we have no interest in the subpoena duces tecum. We never heard of it before.

The Court: Let the writ be discharged, except for the document which has already been produced.

Court stands at recess.

(Whereupon, Court adjourned.)

[fol. 102]

Reporter's Certificate

(Omitted in Printing)

IN UNITED STATES DISTRICT COURT

NOTE OF EVIDENCE—Filed May 21, 1954

Plaintiff, the United States of America, offers this, its note of evidence, in the above numbered and entitled cause:

1. Photostatic copy of the "Agreement for the Purchase [fol. 103] of Lands", Tract No. 6, LB-LA-5-501, executed March 14, 1935, by the Executors and Trustees of the Estate of Joseph Leiter; said copy being certified by Albert C. Rissman, Acting Chief, Branch of Lands, Fish and Wild Life Service of the United States Department of the Interior.

2. Photostatic copy of "Grant of Preliminary Use and Occupancy" executed October 18, 1935, by the Executors and Trustees of the Estate of Joseph Leiter; said copy being certified by Albert C. Rissman, Acting Chief, Branch of Lands, Fish and Wild Life Service of the United States Department of the Interior.

3. Photostatic copy of proceedings in the cause "Succession of Joseph Leiter", this being No. 1319 of the 25th

Judicial District Court, Parish of Plaquemines, State of Louisiana, and consisting more particularly of the following:

- (a) Petition and exhibits attached thereto;
- (b) Order thereunder;
- (c) Oath and bond of testamentary executors;
- (d) Motion and judgment re: inheritance tax;
- (e) Petition for possession filed May 18, 1938;
- (f) Judgment of Possession;

all of the above being certified by the Honorable Allen L. Lobrano, Clerk of Court, in accordance with the Act of Congress.

4. Photostatic copy of the "Ratification of Option Contract", F. S. A. File No. LB-LA-5-501, Tract No. 6, executed by Thomas Leiter on October 24, 1938; said copy [fol. 104] being certified by the Office of the Archivist of the United States through Oliver W. Holmes, Chief Archivist, Natural Resources Records Branch.

5. Photostatic copy of deed, with map attached, by and between Thomas Leiter and United States of America, executed December 21, 1938, which deed was recorded December 28, 1938, in Conveyance Office Book No. 92, Folio 468, of the Parish of Plaquemines; said copy being certified by the Honorable Allen L. Lobrano, Clerk of Court, in accordance with the Act of Congress.

6. Photostatic copy of oil and gas lease No. 013006 BLM, effective as of March 1, 1949, by and between the United States of America through the Bureau of Land Management, and Frank J. Lobrano; said copy being certified as of September 22, 1953, by Oscar E. Collins, Chief, Copy Records Section, The Bureau of Land Management of the United States Department of the Interior.

7. Photostatic copy of oil and gas lease No. 013045, BLM, effective as of March 1, 1939, by and between the United States of America, through the Bureau of Land Management, and Allen L. Lobrano, said copy being certified as of September 22, 1953, by Oscar E. Collins, Chief, Copy Records Section, The Bureau of Land Management of the United States Department of the Interior.

8. Photostatic copy of oil and gas lease No. 013046, BLM, effective as of March 1, 1939, by and between the United

[fol. 105] States of America, through the Bureau of Land Management, and Allen L. Lobrano; said copy being certified as of September 22, 1953, by Oscar E. Collins, Chief, Copy Records Section, The Bureau of Land Management of the United States Department of the Interior.

9. Photostatic copy of oil and gas lease No. 013047, BLM, effective as of March 1, 1939, by and between the United States of America, through the Bureau of Land Management, and Allen L. Lobrano; said copy being certified as of September 22, 1953, by Oscar E. Collins, Chief, Copy Records Section, The Bureau of Land Management of the United States Department of the Interior.

10. Affidavit of L. E. Scott, of the California Company, sworn to and subscribed May 18, 1954, before Leon F. Cambon, Notary Public in and for the Parish of Orleans, State of Louisiana, which affidavit identifies and has attached to it copies of the following documents:

(a) Operating agreement between Frank J. Lobrano and The California Company dated February 2, 1949, affecting Lease No. BLM-F.W.-013006;

(b) Operating agreement between Allen L. Lobrano and The California Company dated February 3, 1949, affecting Lease No. BLM-F.W.-013045;

(c) Operating agreement between Allen L. Lobrano and The California Company dated February 3, 1949, affecting Lease No. BLM-F.W.-013046;

(d) Operating agreement between Allen L. Lobrano and The California Company dated February 3, 1949, [fol. 106] affecting Lease No. BLM-F.W.-013047.

11. Photostatic copy of proceedings in the cause "Succession of Francis Joseph Lobrano, Jr.," this being No. 2945 of the 25th Judicial District Court, Parish of Plaquemines, State of Louisiana, and consisting more particularly of the judgment dated May 6, 1952, recognizing the heirs, sending them into possession, and discharging the administratrix, and supplemental judgment dated December 8, 1953, recognizing the heirs and sending them into possession, all of which being certified by the Honorable Allen L. Lobrano, Clerk of Court, in accordance with the Act of Congress.

12. Photostatic copy of proceedings "In Re: Mrs. Ethel M. Fontenelle, Widow of Francis Joseph Lobrano, Jr.,—Application for Tutrixship of the Minors, Robert Leo Lobrano and Karen Katherine Lobrano", this being No. 3027 of the 25th Judicial District Court, Parish of Plaquemines, State of Louisiana, and consisting more particularly of the following:

- (a) Petition for Homologation of Inventory for Leave to Qualify as Tutrix, and for Appointment of Undertutor;
- (b) Order and judgment executed thereunder;
- (c) Oath of Tutrix;
- (d) Oath of Undertutor;
- (e) Letters of Tutorship;

all of the above being certified by the Honorable Allen L. Lobrano, Clerk of Court, in accordance with the Act of Congress.

[fol. 107] 13. Affidavit of Elmer D. Haymon and Charles R. Blomberg, Petroleum Engineers, sworn to and subscribed May 12, 1954, before Emily Ashmoore, Notary Public in and for the Parish of Orleans, State of Louisiana.

14. Affidavit of John H. Sutherlin, Refuge Manager of the Sabine Wild Life Refuge of the State of Louisiana, sworn to and subscribed May 17, 1954, before Charles A. Riggs, Notary Public in and for the Parish of Cameron, State of Louisiana.

15. Photostatic copy of proceedings in the cause "The Leiter Minerals, Inc. v. The California Company, et al." this being No. 3282 of the 25th Judicial District Court, Parish of Plaquemines, State of Louisiana, and consisting more particularly of the following:

- (a) Petition with exhibits attached thereto;
- (b) Carbon copy of exceptions filed by defendants;
- (c) Judgment on exceptions and opinion of the Honorable Bruce Nunez, Judge;

all of the above being certified by the Honorable Allen L. Lobrano, Clerk of Court, in accordance with the Act of Congress.

Together with the entire record in these proceedings.

In connection with the above Note of Evidence, plaintiff, the United States of America, offers, introduces, and files each of the documents, and attachments thereto, as hereinabove noted.

[fol. 108] New Orleans, Louisiana, May 21, 1954.

(S.) G. R. Blue, George R. Blue, United States Attorney; (S.) M. Hepburn Many, M. Hepburn Many, Assistant U. S. Attorney.

AGREEMENT FOR THE PURCHASE OF LANDS—U. S. 1
United States

Department of The Interior
Fish and Wildlife Service

Washington 25, D. C.

Pursuant to the Act of August 24, 1912 (37 Stat. 497 5 U. S. C. 488), I hereby certify that the attached is a true copy of a document designated "Agreement for the Purchase of Lands", Tract No. 6, LB-LA-5-501, as of the same appears on file in the Fish and Wildlife Service, United States Department of the Interior.

In witness whereof, I have hereunto subscribed my name and caused the seal of the Fish and Wildlife Service to be affixed at the City of Washington, District of Columbia, this 25th day of November, 1952.

(S.) Albert J. Rissman, Acting Chief, Branch of
Lands, Fish and Wildlife Service.

[fol. 109] United States Department of Agriculture

Bureau of Biological Survey

STATE OF LOUISIANA,

County of Plaquemines: _____

Agreement for Purchase of Lands

Project No. _____

LB-LA-5-501

Tract No. 6

From

Juliette Leiter, D. B. Fulton and Alfred M. Rogers, as
Executors and Trustees under the Last Will and Testa-
ment of Joseph Leiter, Deceased.

To

The United States of America

Effective _____, 19____

Acreage not less than 8,000 acres. Price, \$25,000 for entire tract

Location Plaquemines Parish

Reservations Mineral rights 10 years subject to extensions of 5 years each

Outstanding rights or essments

[fol. 110] United States Department of Agriculture
Office of the Secretary

Agreement for the Purchase of Lands

This agreement, Made and entered into this 14th day of March, One Thousand Nine Hundred and Thirty Five, by and between Juliette Leiter, Darrow B. Fulton and Alfred M. Rogers, as Executors and Trustees under the Last Will and Testament of Joseph Leiter, deceased, hereinafter styled the vendors, for themselves, their heirs,

executors, administrators, successors, and assigns, and the United States of America.

Witnesseth:

1. In consideration of ~~One Dollar~~ (\$1.00) in hand paid by the United States, the receipt of which is hereby acknowledged, the vendors agree to sell to the United States for the price and upon the terms and conditions hereinafter set forth, the lands, tenements, and hereditaments, together with all the rights, essements, and appurtenances thereunto belonging, owned by them, and situate and lying in the Parish of Plaquemines, State of Louisiana and known as Leiter Tract, containing not less than 8,000 acres, and particularly described as follows:

[fol. 111] Frl Secs 11 to 17 & 19 Frl NW $\frac{1}{4}$ of Sec 20; E $\frac{1}{2}$ of Sec 20; Frl Secs 21 to 24 N of Main Pass; Frl Sec 26 N of Main Pass; Frl Secs 27 & 28; NW $\frac{1}{4}$ of Sec 29; Frl Sec. 30 & 32; E $\frac{1}{2}$ of Sec 33; S $\frac{1}{2}$ of SW $\frac{1}{4}$ of Sec 33; Frl E $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec 33; Frl NE $\frac{1}{4}$ of SW $\frac{1}{4}$ of Sec 33; Frl NE $\frac{1}{4}$ of Sec 34 N of Main Pass; Frl SE $\frac{1}{4}$ of Sec 34 E of Main Pass; SW $\frac{1}{4}$ of Sec 34; NW $\frac{1}{4}$ of Sec 34; All in T 20 S. R. 19 E. E of River.

Frl Sec 7 W of Main Pass; Frl NW $\frac{1}{4}$ of Sec 18 N of Main Pass in T 20 S. R. 20 E—Frl W $\frac{1}{2}$ of Sec 3 W of Main Pass; Frl Sec. 4; Frl NE $\frac{1}{4}$ of Sec 9 N of Main Pass; NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Sec 3; All in T 21 S. R. 13 E. E of River.

[fol. 112] The said lands are subject to the following easements:

(Railroad, public road, or other right of way, as pipe lines, telephones, telegraph, or electric power line)

2. The price at which said lands will be sold to the United States, as hereinbefore provided, shall be as follows:

(a) \$25,000 for all of said lands.

3. The vendors further covenant and agree that at the date of this instrument the title to the said lands is clear, free, and unencumbered, except as here noted:

Taxes for the calendar years 1934 and 1933.

The vendors further covenant that they have full right, power, and authority to convey, and that they will convey, to the United States the fee simple title thereto clear, free, and unencumbered, except subject to the following reservations:

The right to mine and remove, or to grant to others the right to mine and remove, all oil, gas and other valuable minerals which may be deposited in or under said lands, and to remove any oil, gas or other valuable minerals from the premises; the right to enter upon said lands at any time for the purpose of mining and removing said oil, gas and minerals, said right, subject to the conditions hereinafter set forth, to expire April 1, 1945, it being understood; however, that the vendors will pay to the United States of America, 5 per cent. of the gross proceeds received by them as royalties or otherwise from all oil or minerals so removed from in or under the aforescribed lands, until such time as the vendors shall have paid to the United States of America the sum of \$25,000.00, being the purchase price paid by said United States of America for the aforescribed properties.

[fol. 113] "Provided, that if at the termination of the ten (10) year period of reservation, it is found that such minerals, oil and gas are being operated and have been operated for an average of at least 50 days per year during the preceding three (3) year period to commercial advantage, then, and in that event the said right to mine shall be extended for a further period of five (5) years, but that the right so extended shall be limited to an area of twenty-five acres of land around each well or mine producing, and each well or mine being drilled or developed at time of first extension, to wit: April 1, 1945.

"Provided, that this said right to mine as previously stated shall be further extended from time to time for periods of five (5) years whenever operation during the preceding five (5) year period has been for an average of 50 days per year during this period, and

"Provided, that at the termination of the ten (10- year period of reservation, if not extended, or at the termination of any extended period in case the operation has not been carried on for the number of days stated, the right to mine shall terminate, and complete fee in the land become vested in the United States."

The reservation of the oil and mineral rights herein made for the original period of ten (10) years and for any extended period or periods in accordance with the above provisions shall not be affected by any subsequent conveyance of all or any of the aforementioned properties by the United States of America, but said mineral rights shall, subject to the conditions above set forth, remain vested in the vendors.

The vendors further covenant that they will do or suffer no act whereby such title may be diminished or encumbered; and further, that during the life of this instrument all necessary precautions will be taken to protect the property from damage by fire, trespass, or other causes.

4. The vendors will execute and deliver upon demand of the proper officials and agents of the United States, and without payment or the tender of the purchase price, a good and sufficient Trustees' deed conveying to the United States all of the title of the undersigned as Executors and Trustees under the Last Will and Testament of Joseph Leiter, deceased, in and to the said lands, said title to be of such character as to be satisfactory to the Attorney General.

[fol. 114] 5. The vendors further agree that during the period covered by this instrument officers and accredited agents of the United States shall have at all proper times the unrestricted right and privilege to enter upon said lands for all proper and lawful pur-

poses, including examination of said lands and the resources upon it.

6. In consideration whereof the United States of America covenants and agrees that it will purchase said lands at the price of \$25,000., the acreage to be ascertained by a survey to be made by and at the expense of the United States after reasonable notice to the vendors, and according to the horizontal measurements by the United States in the survey of public lands, or by recourse to the records of the General Land Office, or by both; and it further covenants and agrees that, after the execution, delivery, and recordation of the said deed and the signing of the usual Government voucher or vouchers there for, and after the Attorney General of the United States shall have approved the title thus vested in the United States, it will cause to be paid to the vendors the purchase price by a United States Treasury warrant or disbursing officer's check.

7. It is mutually understood and agreed that the United States will secure an abstract of the title to the property herein contracted to be sold without cost to the vendors.

8. It is understood and agreed that if the Attorney General determines that the title to said lands or any part thereof should be acquired by the United States by judicial proceedings, either to procure a safe title or to obtain title more quickly, or for any other reason, then the compensation to be claimed by the owners and the award to be made for said lands in said proceedings shall be upon the basis of the purchase price herein provided.

9. It is further understood and agreed that in the event the United States of America shall not within ninety (90) days after it has executed this agreement elect to accept such title as may be conveyed by the deed to be given by the vendors in accordance with Section 4, the United States of America will convey all of the aforescribed property back to the vendors by a quit claim deed.

[fol. 115] 10. While this agreement is primarily in-

tended to be made by the United States by and through the Secretary of Agriculture, yet it may be entered into by and through any other officer or agency of the United States authorized thereunto, and the optional rights hereby granted to enter into this agreement may be availed of by the United States through any other officer or agency authorized to purchase said lands.

11. It is further mutually agreed that the Secretary of Agriculture or other officer of the United States may upon 30 days written notice to the vendors terminate this agreement at any time.

12. It is further mutually agreed that no Member of or Delegate to Congress, or Resident Commissioner, after his election or appointment, and either before or after he has qualified, and during his continuance in office shall be admitted to any share or part of this contract or agreement, or to any benefit to arise thereupon. Nothing, however, herein contained shall be construed to extend to any incorporated company, where such contract or agreement is made for the general benefit of such incorporation or company (Section 3741, Revised Statutes, and Sections 114, 116, Act of March 4, 1909).

13. That this contract shall not be assigned in whole or in part.

IN WITNESS WHEREOF, the vendors as Executors and Trustees under the Last Will and Testament of Joseph Leiter, deceased, have hereunto signed their names and affixed their respective seals, on the day first above written, with the understanding that this Agreement for Purchase cannot be executed by the Secretary of Agriculture until after it is reported to him for his consideration, and therefore the vendors for and in consideration of the \$1.00 hereinabove acknowledged as received, have and do hereby grant unto the United States of America, by and through the Secretary of Agriculture or any other officer or agency of the United States authorized to purchase said lands, the option and right to enter into this Agreement of Purchase within 120 days from the execution thereof by the vendors, and to purchase said lands as herein provided.

Witness as to the signatures of the vendors.

(S.) Juliette Leiter (L. S.), (S.) D. B. Fulton (L. S.),
[fol. 116] (S.) Alfred M. Rogers, (L. S.), As
Executors and Trustees under the Last Will and
Testament of Joseph Leiter, deceased.

The Secretary of Agriculture has executed this agree-
ment on behalf of the United States of America, and has
caused the Seal of the Department of Agriculture to be
hereunto affixed on this _____ day of _____, 193____.

The United States of America, By — — —, Secre-
tary of Agriculture.



(Seal of the Department of Agriculture)

STATE OF ILLINOIS,

County of Cook, ss.:

Be it remembered that on this 14th day of March in
the year Nineteen Hundred and Thirty Five, before the
subscriber, a notary public in and for the County of Cook,
State of Illinois, appeared D. B. Fulton and Alfred M.
Rogers, described in and who as Executors and Trustees
under the Last Will and Testament of Joseph Leiter, de-
ceased, executed the hereto annexed instrument of writing,
dated March 14th, 1935, and the said D. B. Fulton and
Alfred M. Rogers, acknowledged that they executed the
said instrument freely for the purposes therein stated, and
I further certify that the persons who made the said ac-
knowledgment are known to me to be the persons described
in and who executed the said instrument.

Given under my hand and official seal.

(S.) Eleanor E. Nedstrom, Notary Public; Eleanor
E. Newstrom, Notary Public, Cook County, Ill.

[fol. 117] STATE OF ILLINOIS,

County of Cook, ss.:

Be it remembered that on this 14th day of March, in
the year Nineteen Hundred and Thirty Five, before the
Subscriber, a notary public in and for the County of Cook,
State of Illinois, appeared Juliette Leiter, described in and

who as one of the Executors and Trustees under the Last Will and Testament of Joseph Leiter, deceased, executed the hereto annexed instrument of writing, dated March 14th, 1935, and the said Juliette Leiter, acknowledged that she executed the said instrument freely for the purposes therein stated, and I further certify that the person who made the said acknowledgment, is known to me to be the person described in and who executed the said instrument.

Given under my hand and official seal.

Eleanor E. Nedstrom, Notary Public, Cook County,
Ill., (S.) Eleanor E. Nedstrom, Notary Public.

GRANT OF PRELIMINARY USE AND OCCUPATION—U. S. 2
United States

Department of the Interior

Fish and Wildlife Service

Washington 25, D. C.

Pursuant to the Act of August 24, 1912 (37 Stat. 497, 5 U. S. C. 488), I hereby certify that the attached is a true copy of an instrument dated October 18, 1935, granting the United States the right to enter upon and use certain lands known as the Leiter Estate property, as the same appears of record in the Fish and Wildlife Service, United States Department of the Interior.

In Witness Whereof, I have hereunto subscribed my name and caused the seal of the Fish and Wildlife Service to be affixed at the City of Washington, District of Columbia, this 11th day of May, 1954.

[fol. 118] (S.) Albert J. Bissman, Acting Chief,
Branch of Lands, Fish and Wildlife Service.

GRANT OF PRELIMINARY USE AND OCCUPATION

The Executors and Trustees of the Joseph Leiter Estate hereby grant to the United States of America the right and privilege to immediately enter upon and use the lands

known as the Leiter Estate property located in Plaquemines Parish, Louisiana, and embracing 8000 acres, more or less, which are under contract to be sold to the United States of America. This permission is granted in order that the United States may immediately establish the Delta Migratory Waterfowl Refuge by Executive Order.

The privilege herein granted at the request of the United States in order that the establishment of this refuge area be not delayed pending the vesting of title. No charge will be made for this preliminary use and occupation.

The right of entry is herein granted and accepted upon the understanding that in the event the United States of America does not make the payment required to be made for the above described property within thirty (30) days after conveyance of said property is tendered to the United States, that the United States will at the request of the Executors and Trustees of the Joseph Leiter Estate immediately surrender possession of said property to the Executors and Trustees of the Joseph Leiter Estate, and that at such time the property shall be in substantially [fol. 119] the same condition as it is at the time the United States enters upon the same under the right of entry herein granted.

Witnesses as to signatures:

(S.) Alvin H. Holm, (S.) Alvin H. Holm, (S.) Frances English, (S.) D. B. Fulton (L. S.), (S.) Alfred M. Rogers (L. S.), (S.) Juliette Leiter (L. S.), Executors and Trustees under the Last Will and Testament of Joseph Leiter, deceased.

Dated at Chicago, Illinois, this 18th day of October, 1935.

STATE OF ILLINOIS,

County of Cook, ss.:

Be it remembered that on this eighteenth day of October in the year Nineteen Hundred and Thirty-Five, before the subscriber, a Notary Public, in and for the County of Cook, State of Illinois, appeared D. B. Fulton and Alfred M. Rogers, described in and who as Executors and Trustees under the Last Will and Testament of Joseph Leiter, de-

ceased, executed the hereto annexed instrument of writing, and the said D. B. Fulton and Alfred M. Rogers acknowledged that they executed the said instrument freely for the purpose therein stated, and I further certify that the persons who made the said acknowledgment are known to me to be the persons described in and who executed the said instrument.

Given under my hand and official seal.

(S.) Eleanor E. Hedstrom, Notary Public.

STATE OF ILLINOIS,
County of Cook, ss.:

Be it remembered that on this eighteenth day of October in the year Nineteen Hundred and Thirty-Five, before the subscriber, a Notary Public, in and for the County of Cook, State of Illinois, appeared Juliette Leiter, described in and who as one of the Executors and Trustees under the Last Will and Testament of Joseph Leiter, deceased, executed the hereto annexed instrument of writing, and the said [fol. 120] Juliette Leiter acknowledged that she executed the said instrument freely for the purposes therein stated, and I further certify that the person who made the said acknowledgment is known to me to be the person described in and who executed the said instrument.

Given under my hand and official seal.

(S.) Eleanor E. Hedstrom, Notary Public.

RATIFICATION OF OPTION CONTRACT—U. S. 4

General Services Administration

National Archives and Records Service

The National Archives

To All To Whom These Presents Shall Come, Greeting:

I certify that the annexed copy, or each of the specified number of annexed copies, of each document listed below

is a true copy of a document in the official custody of the Archivist of the United States.

RG. 114 Records of Soil Conservation Service
Vendor Case Files 1933-39, Louisiana, Ratification
of Option Contract, F. S. A. File No. LB-LA-5-501,
Tract No. 6, Vendor: Estate of Joseph Leiter.

In testimony whereof, I, Wayne C. Grover, Archivist of the United States, have hereunto caused the Seal of the National Archives to be affixed and my name subscribed by the Chief Archivist, Natural Resources Records Branch of the National Archives, in the District of Columbia, this 2nd day of October, 1953.

[fol: 121] (S.) Wayne C. Grover, Archivist of the United States. By: (S.) Oliver W. Holmes. File Room, Dec. 8, 1953.

Ratification of Option Contract

FSA File No. LB-LA-5-501

Tract No. 6

Vendor: Estate of Joseph Leiter

Whereas, on March 14, 1935, Juliette Leiter, D. B. Fulton and Alfred M. Rogers, acting as the Executors and Trustees under the last will and testament of Joseph Leiter, deceased, executed an option agreeing to convey to the United States of America lands situate in Plaquemines Parish, Louisiana, to contain not less than 8,000 acres, for and in consideration of the sum of \$25,000 to be paid by the United States of America; and,

Whereas, on June 27, 1935, the United States of America mailed a notice of acceptance of the aforesaid offer to Mr. C. J. Tessier, 217 Carondelet Street, New Orleans, Louisiana, accepting the option above described on the terms and provisions stipulated therein; and,

Whereas, the preliminary opinion rendered by the Department of Justice on October 4, 1938, upon the title to the lands which are to be conveyed to the United States pur-

suant to the aforesaid option contract, finds the title to be vested in Thomas Leiter, and requires that these lands [fol. 122] be conveyed to the United States by warranty deed signed by the said Thomas Leiter; and,

Now, therefore, I, Thomas Leiter, do hereby adopt and ratify the aforesaid option contract and further signify my intention and willingness to execute a warranty deed in the form and at the time required by the Attorney General of the United States in fulfillment of the option contract above described.

Dated this 24th day of October, 1938.

(S.) Thomas Leiter.

AFFIDAVITS AND COPY OF DEED—U. S. 5

State of Louisiana

Parish of Plaquemines

Twenty-Fifth Judicial District Court

I, Allen L. Lobrano, Clerk of the Twenty-Fifth Judicial District Court for the Parish of Plaquemines, Louisiana—

Do hereby certify, that the above and foregoing are true and correct copies of the original documents, being transferred by Thomas Leiter to the United States of America, with map attached, and duly recorded in the Conveyance Records of the Parish of Plaquemines, Louisiana, in Conveyance Book 92, at Folio 468 on the 28th day of December, 1938.

In testimony whereof, I have hereunto set my hand and affixed the seal of this said Court, at Pointe-a-la-Hache, Louisiana, on this 7th day of May, in the year of our Lord One Thousand Nine Hundred and Fifty-four, and in the One Hundred and Seventy-eighth year of the Independence of the United States of America.

(S.) Allen L. Lobrano, Clerk.

[fol. 123] I, Bruce Nunez, presiding Judge of the Twenty-Fifth Judicial District Court for the Parish of Plaquemines, do hereby certify, that—Allen L. Lobrano—

is the Clerk of said Court, and the same is a Court of Record having probate jurisdiction, and that the signature, Allen L. Lobrano, Clerk to the foregoing certificate is in the proper handwriting of him, the said Allen L. Lobrano, Clerk to his official act as such, full faith and credit are due and owing; and I do further certify that his attestation is in due form of law.

Given under my hand at Pointe-a-la-Hache, Louisiana, on the 7th day of May, in the year of our Lord One Thousand Nine Hundred and Fifty-four.

(S.) Bruce Nunez, Presiding Judge.

I, Allen L. Lobrano, Clerk of the Twenty-Fifth Judicial District Court for the Parish of Plaquemines, do hereby certify that Bruce Nunez whose signature appears to the foregoing certificate, is now, and was at the time of signing the same, presiding Judge of the Twenty-fifth Judicial District Court for the Parish of Plaquemines, duly appointed and commissioned and qualified as such, and that said attestation is in due form of law.

Witness my hand and the seal of said Court, this 7th day of May, 1954.

(S.) Allen L. Lobrano, Clerk.

Know all men by these presents that I, Thomas Leiter, of full age and majority, and a resident of Washington, D. C., do by these presents, grant, bargain, sell, convey, transfer, assign, set over, abandon and deliver, with all legal warranties and with full substitution and subrogation in and to all the rights and actions of warranty which I have or may have against all preceding owners and vendors unto the United States of America, and its assigns, all and singular, the following described property, situate in [fol. 124] the Parish of Plaquemine-, State of Louisiana:

Part of the fractional Southeast Quarter (frl. SE $\frac{1}{4}$) of fractional Section Ten (10); part of the Southeast Quarter of the fractional Northeast Quarter (SE $\frac{1}{4}$ Frl. NE $\frac{1}{4}$) and part of the South one-half (S $\frac{1}{2}$) of fractional Section Eleven (11); part of the North one-half (N $\frac{1}{2}$) and all of the South one-half (S $\frac{1}{2}$) of Sec-

tion Twelve (12); all of fractional Section Thirteen (13) lying Northwest of Main Pass; all of Section Fourteen (14); part of the North one-half ($N\frac{1}{2}$) and all of the South one-half ($S\frac{1}{2}$) of Section Fifteen (15); part of the Southeast Quarter of the Northeast Quarter ($SE\frac{1}{4} NE\frac{1}{4}$), part of the Southwest Quarter of the Northwest Quarter ($SW\frac{1}{4} NW\frac{1}{4}$), and part of the South one-half ($S\frac{1}{2}$) of fractional Section Sixteen (16); part of the Southeast Quarter ($SE\frac{1}{4}$) of the fractional Northeast Quarter ($NE\frac{1}{4}$), and part of the Southeast Quarter ($SE\frac{1}{4}$) of fractional Section Seventeen (17) part of the North one-half ($N\frac{1}{2}$), and all of the fractional South one-half ($S\frac{1}{2}$) of fractional Section Nineteen (19), lying Northeast of the 40 Arpent Line; part of the North one-half ($N\frac{1}{2}$), and all of the Southeast Quarter ($SE\frac{1}{4}$) of Section Twenty (20); all of Section Twenty-one (21); all of Section Twenty-two (22); all of the North one-half ($N\frac{1}{2}$), and all of the fractional South one-half ($S\frac{1}{2}$) of fractional Section Twenty-three (23), lying Northwest of Main Pass; all of fractional Section Twenty-four (24) lying Northwest of Main Pass; all of fractional Section Twenty-six (26), lying Northwest of Main Pass; all of Section Twenty-seven (27); all of Section Twenty-eight (28); the fractional Northeast Quarter ($NE\frac{1}{4}$) of fractional Section Thirty (30), lying Northeast of the 40-Arpent Line; the fractional West one-half of the Northeast Quarter ($W\frac{1}{2} NE\frac{1}{4}$) and the fractional Northwest Quarter ($NW\frac{1}{4}$) of fractional Section Thirty-two (32), lying Northeast of the 40-Arpent Line; the East one-half ($E\frac{1}{2}$), the East one-half of the West one-half ($E\frac{1}{2} W\frac{1}{2}$), and the Southwest Quarter of the Southwest Quarter ($SW\frac{1}{4} SW\frac{1}{4}$), of Section Thirty-three (33); the West one-half ($W\frac{1}{2}$); and the fractional East one-half ($E\frac{1}{2}$) of fractional Section Thirty-four (34) lying Northwest of Main Pass; all of the above described lands being in Township Twenty (20) South, Range Nineteen (19) East, of the St. Helena Meridian.

Part of fractional Section Seven (7), lying Northwest of Main Pass, and all of the fractional North one-half ($N\frac{1}{2}$) of fractional Section Eighteen (18)

lying Northwest of Main Pass, all in Township lying [fol. 125] Northwest of Main Pass, all in Township Twenty (20) South, Range Twenty (20) East, of the St. Helena Meridian.

All of Fractional Section Three (3) lying Northwest of Main Pass; all of fractional Section Four (4) lying Northeast of the 40 Arpent Line; and fractional Section Nine (9) lying Northeast of the 40-Arpent Line and Northwest of Main Pass; all in Township Twenty-one (21) South Range Nineteen (19) East, of the St. Helena Meridian.

All of the above described lands being bounded on the Southwest in part by the 40-Arpent Line, or the Northeast boundary of the Radial Sections, bounded on the southeast in part by the northwest or left bank of Main Pass, and bounded on the north by the south boundary of lands now or formerly owned by the Grand Prairie Levee District and being more particularly described as follows:

Beginning at the Northwest corner of fractional Section 19, T 20 S, R 19 E, thence S $0^{\circ} 01' E$ 44.15 chs. to a point on the 40-Arpent Line, thence S $42^{\circ} 47' E$ 5.94 chs., thence S $41^{\circ} 23' E$ 13.95 chs., thence S $40^{\circ} 14' E$ 13.95 chs., thence S $37^{\circ} 27' E$ 13.11 chs. to the intersection of the division line between fractional Sections 19 and 30, T 20 S R 19 E, with the 40-Arpent Line, thence East 9.76 chs. to the quarter corner between fractional Sections 19 and 30, T 20 S, R 19 E. thence South 12.19 chs. to the 40-Arpent Line, thence S $40^{\circ} 23' E$ 13.12 chs. thence S $42^{\circ} 58' E$ 5.48 chs., thence S $42^{\circ} 58' E$ 8.47 chs., thence S $44^{\circ} 23' E$ 10.68 chs. to the intersection of the center line of Section 30 T 20 S. R 19 E, with the 40-Arpent Line, thence East 14.48 chains along the center line of said Section 30 to the Southeast corner of the NE $\frac{1}{4}$ of said Section 30, T 20 S, R 19 E. thence North 40 chs. to the Southeast corner of fractional Section 19, T 20 S, R 19 E, thence North 40 chs. to Northeast corner of the SE $\frac{1}{4}$ of said fractional Section 19 T 20 S, R 19 E, thence East 40 chs. to the center of Section 20, T 20 S, R 19 E, thence South 40 chs. to the Quarter corner between Section 20 and fractional Section 29, T 20 S. R 19 E.

thence East 40 chs. to the Northeast corner of Fractional Section 29, T 20 S. R 19 E. thence South 80 chs. along the division line between Section 28 and fractional Section 29, T 20 S, R. 19 E, to the southeast corner of fractional Section 29 T 20 S, R 19 E, thence East 20 chs. along the division line between Sections 28 and 33, T 20 S. R 19 E, thence South 60 chs. to the Northeast corner of the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of [fol. 126] Section 33, T 20 S, R 19 E, thence West 20 chs. to the NW corner of SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Section 33, T 20 S, R 19 E, thence S 0° 01' W 20 chs. to the Southwest corner of said Section 33, T 20 S, R 19 E, thence South 6.24 chs. to a point on the 40-Arpent Line, thence S 32° 00' E 11.18 chs., thence S 32° 00' E 14.00 chs., thence S 32° 00' E 14.00 chs., thence S 32° 00' E 14.00 chs., thence S 28° 00' E 13.97 chs., thence S 25° 00' E 4.93 chs., thence S 25° 00' E 9.07 chs., thence S 25° 00' E 14.00 chs., thence S 25° 26' E 14.00 chs., thence S 27° 00' E 14.00 chs., thence S 27° 00' E 10.99 chs. to the intersection of the 40-Arpent Line with the left bank of Main Pass, thence down the left bank of Main Pass with its meanders thereof 22.74 chs. to the point of intersection of the division line between fractional Sections 9 and 10, T 21 S, R 19 E lying Northwest of Main Pass with the left bank of Main Pass, thence North 34.68 chs. to the Southeast corner of fractional Section 4, T 21 S, R 19 E, thence East 14.98 chs. along the division line between fractional Sections 3 and 10, T 21 S, R 19 E lying Northwest of Main Pass, to the left bank of Main Pass, thence down the left bank of Main Pass with its meanders thereof 157.71 chs. to the intersection of the division line between fractional Sections 34 and 35, T 20 S, R 19 E, lying Northwest of Main Pass, with the left bank of Main Pass, thence North 16.37 chs. to the Southeast corner of Section 27, T 20 S, R 19 E, thence East along the division line between fractional Sections 26 and 35, T 20 S, R 19 E, lying Northwest of Main Pass, 14.41 chs. to the left bank of Main Pass, thence down the left bank of Main Pass with its meanders thereof 241.07 chs. to the intersection of the division line between fractional sec-

tion 13 T 20 S, R 19 E and fractional Section 18, T 20 S, R 20 E, lying Northwest of Main Pass, with the left bank of Main Pass, thence North 11.93 chs. along said division line to the Southeast corner of the NE $\frac{1}{4}$ of said fractional Section 13, T 20 S, R 19 E, thence East 14.49 chs. along the center line of fractional Section 18 T 20 S, R 20 E to the left bank of Main Pass, thence down the left bank of Main Pass with its meanders thereof 106.38 chs. to an inch and a quarter (1 $\frac{1}{4}$ ") iron pipe embedded in a terra cotta pipe, and supported by a concrete base marked "2" and a U. S. B. S. standard concrete post marked "22, R 20 E, T 20 S., S.7 SMC 1936" and situate on the left bank of Main Pass in the eastern boundary of fractional Section 7, T 20 S, R 19 E., Northwest of Main Pass, from which iron pipe, U. S. C. & G. S. triangulation station "main" bears S 23° 22' W. 25.73 chs. distant, and also from said iron pipe, the intersection of the line [fol. 127] between fractional Section 7 and 18 T 20 S, R 20 E bears South 19° 17' W 57.84 chs. distant; thence from said iron pipe and passing within said fractional Section 7, T 20 S, R 20 E, N 13° 33' W 10.63 chs., thence N 45° 08' W 10.91 chs.; thence N 72° 09' W 12.21 chs., thence S 56° 14' W 6.85 chs., thence S 33° 01' W. 6.90 chs., thence N 77° 45' W 15.99 chs., thence S 74° 36' W 5.83 chs., thence S 74° 31' W. 8.06 chs. to a point on the division line between fractional Section 7, T 20 S, R 20 E and Section 12 T 20 S, R 19 E, thence passing within Section 12, T 20 S, R 19 E, S 74° 31' W 3.73 chs., thence S 34° 38' W 10.73 chs. thence S 71° 28' W 3.62 chs., thence N 65° 17' W 26.26 chs., thence S 78° 36' W 11.04 chs., thence S 78° 18' W 2.03 chs., thence N. 42° 49' W 5.20 chs., thence S 75° 49' W 26.12 chs., thence S 39° 55' W 2.16 chs., to a point on the division line between fractional Section 11 and Section 12, T 20 S, R 19 E, thence passing within said fractional Section 11, T 20 S, R 19 E S 39° 55' W 15.39 chs., thence S 10° 43' W 13.98 chs., thence N 88° 59' W 14.01 chs., thence S 44° 28' W 24.58 chs., thence S 86° 36' W 22.94 chs., thence N 83° 28' W 8.50 chs., thence S 50° 27' W 5.79 chs. to a point on the division line between fractional Sec-

tions 10 and 11, T 20 S, R 19 E, thence passing within said fractional Section 10, T 20 S, R 19 E, S $59^{\circ} 27' W$ 13.82 chs., thence S $67^{\circ} 01' W$ 14.56 chs., thence S $67^{\circ} 02' W$ 2.06 chs. to a point on the division line between fractional Section 10 and Section 15 T 20 S, R 19 E, thence passing within said Section 15, T 20 S, R 19 E S $67^{\circ} 02' W$ 0.16 chs., thence S $66^{\circ} 55' W$ 8.76 chs., thence S $40^{\circ} 03' W$ 28.64 chs., thence S $75^{\circ} 16' W$ 23.94 chs., thence S $20^{\circ} 27' W$ 7.30 chs., to a point on the division line between Section 15 and fractional Section 16, T 20 S, R 19 E, thence passing within fractional Section 16, T 20 S, R 19 E S $20^{\circ} 27' W$ 2.70 chs., thence S $20^{\circ} 52' W$ 6.81 chs., thence S $41^{\circ} 43' W$ 21.86 chs., thence N $50^{\circ} 29' W$ 22.39 chs., thence N $86^{\circ} 26' W$ 13.74 chs., thence N $86^{\circ} 18' W$ 14.98 chs., thence N $61^{\circ} 06' W$ 19.05 chs. to a point on the division line between fractional Sections 16 and 17, T 20 S, R 19 E, thence passing through said fractional Section 17, T 20 S, R 19 E, N $61^{\circ} 06' W$ 6.66 chs., thence S $58^{\circ} 15' W$ 18.82 chs., thence S $18^{\circ} 15' W$ 21.63 chs., thence S $17^{\circ} 27' W$ 2.54 chs., thence S $18^{\circ} 28' W$ 6.16 chs., thence S $33^{\circ} 01' W$ 7.49 chs. to a point on the division line between fractional section 17 and Section 20, T 20 S, R 19 E, thence passing within said Section 20 T 20 S, R 19 E, S $33^{\circ} 01' W$ 2.07 chs. thence [fol. 128] S $32^{\circ} 59' W$ 28.40 chs., thence S $72^{\circ} 28' W$ 24.82 chs., thence N $52^{\circ} 58' W$ 5.47 chs., to a point on the division line between fractional Section 19 and Section 20, T 20 S, R 19 E, thence passing within said fractional Section 19, T 20 S, R 19 E N $52^{\circ} 58' W$ 3.35 chs., thence N $52^{\circ} 59' W$ 4.87 chs. thence N $52^{\circ} 58' W$ 10.88 chs. thence N $52^{\circ} 56' W$ 4.33 chs., thence N $71^{\circ} 01' W$ 47.91 chs. to a point on the division line between Section 18 and fractional Section 19, T 20 S, R 19 E, thence N $89^{\circ} 56' W$ 16.02 chs., to the point of beginning, being the northwest corner of fractional section 19, T 20 S, R 19 E.

Also, in addition to the lands described above, a tract of land described as follows:

Beginning at the Southeast corner of the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of fractional Section 29, T 20 S, R 19 E, thence

passing within fractional Section 32, T 20 S, R 19 E, south 39.99 chains, thence West 9.67 chains to a point on the 40-Arpent Line, thence N 33° 30' W 3.88 chs., thence N 35° 00' W 14.00 chs., thence N 35° 00' W 14.00 chs., thence N 35° 00' W 14.00 chs., thence N 39° 39' W 3.06 chs., to the intersection of the division line between fractional Sections 29 and 32, T 20 S, R 19 E, within the 40-Arpent Line, thence along said division line S 89° 59' E 37.86 chs. to the point of beginning.

All of the above described lands contain in the aggregate 8,711 acres, more or less, all in accordance with map or survey of United States Department of Agriculture, Bureau of Biological Survey, dated November 27, 1937, attached hereto.

To have and to hold the above described property unto the said purchaser the United States of America, and its assigns forever. This sale is made and accepted for and in consideration of the price and sum of Twenty Five Thousand Dollars (\$25,000.00) cash, which the said purchaser has well and truly paid in ready and current money to the said Thomas Leiter, who hereby acknowledges the receipt thereof and grants full acquittance and discharge therefor.

[fol. 129] The Vendor reserves from this sale the right to mine and remove, or to grant to others the right to mine and remove, all oil, gas and other valuable minerals which may be deposited in or under said lands, and to remove any oil, gas or other valuable minerals from the premises; the right to enter upon said lands at any time for the purpose of mining and removing said oil, gas and minerals, said right, subject to the conditions hereinafter set forth, to expire April 1, 1945, it being understood, however, that the vendors will pay to the United States of America, 5% of the gross proceeds received by them as royalties or otherwise from all oil or minerals so removed from in or under the aforescribed lands, until such time as the vendors shall have paid to the United States of America, the sum of \$25,000, being the purchase price paid by said United States of America for the aforescribed properties.

Provided, that if at the termination of the ten (10) year period of reservation, it is found that such minerals, oil and gas are being operated and have been operated for an average of at least 50 days per year during the preceding three (3) year period to commercial advantage, then, and in that event, the said right to mine shall be extended for a further period* of five (5) years, but that the right so extended shall be limited to an area of twenty-five acres of land around each well or mine producing, and each well or mine being drilled or developed at time of first extension, to-wit: April 1, 1945.

Provided, that this said right to mine as previously [fol. 130] stated shall be further extended from time to time for periods of five (5) years whenever operation during the preceding five (5) year period has been for an average of 50 days per year during this period, and

Provided that at the termination of the ten (10) year period of reservation, if not extended, or at the termination of any extended period in case the operation has not been carried on for the number of days stated, the right to mine shall terminate, and complete fee in the land become vested in the United States.

The reservation of the oil and mineral rights herein made for the original period of ten (10) years and for any extended period or periods in accordance with the above provisions shall not be affected by any subsequent conveyance of all or any of the aforementioned properties by the United States of America, but said mineral rights shall, subject to the conditions above above set forth, remain vested in the vendors.

All taxes up to and including the taxes due and exigible in 1937 have been paid.

I declare that I have never been married.

In witness whereof I have hereunto signed this instrument in duplicate this 21st day of December, 1938 at War-enton, Va. in the presence of Arthur W. R. Chaington and John A. Hinckley competent witnesses, who have hereunto signed their names with me.

(S.) Thomas Leiter, Thomas Leiter.

[fols. 131-146]. Witness: (S.) Arthur W. R. Chaington, (S.) John A. Hickley.

STATE OF VIRGINIA,
County of Fauquier:

Be it remembered that this 21st day of December, 1938, before the subscriber a Notary Public in and for the County of Fauquier State of Virginia appeared Thomas Leiter, who declared that he is the person described in the foregoing instrument and that he acknowledges that the executed said instrument freely and for the purposes therein stated, and I further certify that the person who made the said acknowledgment is known to me as the person described in and who executed the said instrument.

Given under my hand and official seal.

(S.) Claude C. Colvin, Notary Public.

STATE OF VIRGINIA,
County of Fauquier:

Be it remembered that this 21st day of December, 1938, before the subscriber, a Notary Public in and for the County of Fauquier, State of Virginia appeared Arthur W. R. Calington and John A. Hinckley who acknowledged that they signed the above and foregoing instrument as witnesses and stated to me, Notary, that the said Thomas Leiter executed said instrument before them in their capacities as witnesses, and I further certify that said appearers are known to me as the persons who witnessed the execution of said instrument.

Given under my hand and official seal.

(S.) Claude C. Colvin, Notary Public.

Recorded Parish of Plaquemine-
on this 28th day of December, 1938
in C. O. B. No. 92 Folio 468
of this Parish

(S.) A. L. Lobrano, Clerk of Court.

(Map annexed hereto transmitted in original)

[fol. 147] LEASE OF OIL AND GAS LANDS—U. S. 7

4-207

(Oct. 1952)

United States Department of the Interior

Bureau of Land Management

Washington 25, D. C.

ARC

JF

Sep. 22, 1953

I hereby certify that the annexed photostatic copy of Oil and Gas Lease No. 031045, BLM, is a true and literal exemplification of the record on file in this office in my custody.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

(S.) Oscar E. Collins, Chief, Copy Records Section.

[fol. 148] Form 4-1097

(Jan. 1948)

United States Department of the Interior

Bureau of Land Management

Noncompetitive

Acquired Lands

Serial B. L. M.-F. W. 013045

Louisiana

Lease of Oil and Gas Lands Under the Act of August 7, 1947 (61 Stat. 913)

This Indenture of Lease, entered into, in triplicate, and to take effect as of March 1, 1949 by and between the United States of America, through the Bureau of Land Management hereinafter called the lessor, and Allen L. Lobrano, Pointe a la Hache, Louisiana, party of the second part, hereinafter called the lessee, under, pursuant, and subject

to the terms and provisions of the act of August 7, 1947 (61 Stat. 913), hereinafter referred to as the act, and to all reasonable regulations thereunder which are now or hereafter shall be in force, which are made a part hereof. Witnesseth:

Section 1. *Rights of Lessee*—That the lessor, in consideration of rents and royalties to be paid, and the conditions and covenants to be observed as herein set forth, does hereby grant and lease to the lessee the exclusive right and privilege to drill for, mine, extract, remove, and dispose of all the oil and gas deposits owned by the lessor except helium gas in or under the following-described tracts of land situated in

Description

T. 20 S., R. 19 E., St. Helena Mer. Louisiana, *Interest of the United States*

sec. 10, that portion of the SE $\frac{1}{4}$ lying in oil and

South and East of the Leither Estate gas*

Boundary.

sec. 11, all of Section lying South and East of the Leiter Estate Boundary.

All

sec. 15, all of Section lying South and East of the Leiter Estate Boundary.

sec. 16, all of Section lying South and East of the Leiter Estate Boundary.

sec. 17, that portion of the SE $\frac{1}{4}$ and the SE $\frac{1}{4}$ of NE $\frac{1}{4}$ lying South and East of the Leiter Estate Boundary.

sec. 19, all of Section lying South of the Leiter Estate Boundary.

[fol. 149] Sec. 20, E $\frac{1}{2}$ of Sec.; that portion of the NW $\frac{1}{4}$ lying South and East of the Leiter Estate Boundary.

sec. 21, N $\frac{1}{2}$ of N $\frac{1}{2}$. sec. 30, all of fractional Section.

containing 2341.00 acres, more or less, together with the right to construct and maintain thereupon all works, buildings, plants, waterways, roads, telegraph or telephone lines,

* If the interest of the United States in the oil and gas proves to be larger or smaller than the interest stated, the rentals and royalties payable by the lessee shall be increased or decreased proportionately.

pipe lines, reservoirs, tanks, pumping stations, or other structures necessary to the full enjoyment thereof, for a period of 5 years, and so long thereafter as oil or gas is produced in paying quantities; subject to any unit agreement heretofore or hereafter approved by the Secretary of the Interior, the provisions of said agreement to govern the lands subject thereto where inconsistencies with the terms of this lease occur.

[fol. 150] Sec. 2. In consideration of the foregoing, the lessee hereby agrees:

(a) *Bonds*.—(1) To maintain any bond furnished by the lessee as a condition for the issuance of this lease. (2) If the lease is issued noncompetitively, to furnish a bond in a sum double the amount of the \$1 per acre annual rental, but not less than \$1,000 nor more than \$5,000 upon the inclusion of any part of the leased land within the geologic structure of a producing oil or gas field. (3) To furnish prior to beginning of drilling operations and maintain at all times thereafter as required by the lessor a bond in the penal sum of \$5,000 with approved corporate surety, or with deposit of United States bonds as surety therefor, conditioned upon compliance with the terms of this lease, unless a bond in that amount is already being maintained or unless such a bond furnished by an approved operator of the lease is accepted.

Until a general lease bond is filed a noncompetitive lessee will be required to furnish and maintain a bond in the penal sum of not less than \$1,000 in those cases in which a bond is required by law for the protection of the owners of surface rights. In all other cases where a bond is not otherwise required, a \$1,000 bond must be filed for compliance with the lease obligations not less than 90 days before the due date of the next unpaid annual rental, but this requirement may be successively dispensed with by payment of each successive annual rental not less than 90 days prior to its due date.

(b) *Cooperative or unit plan*.—Within 30 days of demand, or if the land is within an approved unit plan, in the event such a plan is terminated prior to the

expiration of this lease, within 30 days of demand made thereafter, to subscribe to and to operate under such reasonable cooperative or unit plan for the development and operation of the area, field, or pool, or part thereof, embracing the lands included herein as the Secretary of the Interior may determine to be practicable and necessary or advisable, which plan shall adequately protect the rights of all parties in interest, including the United States.

*(c) *Wells*.—(1) To drill and produce all well necessary to protect the leased land from drainage, or in lieu of any part of such drilling and production, with the consent of the Director of the Geological Survey, to compensate the lessor in full each month for the estimated loss of royalty through drainage in the amount determined under instructions of said Secretary. (2) at the election of the lessee, to drill and produce other wells in conformity with any system of well spacing or production allotments affecting the field or area in which the leased lands are situated, which is authorized and sanctioned by applicable law or by the Secretary of the Interior; and (3) promptly after due notice in writing to drill and produce such other wells as the Secretary of the Interior may require to insure diligence in the development and operation of the property.

[fol. 151] (d) *Rentals and royalties*.—(1) To pay the rentals and royalties set out in the rental and royalty schedule attached hereto and made a part hereof.

(2) It is expressly agreed that the Secretary of the Interior may establish reasonable minimum values for purposes of computing royalty on any or all oil, gas, natural gasoline, and other products obtained from gas; due consideration being given to the highest price paid for a part or for a majority of production of like quality in the same field, to the price received by the

* That no wells be drilled within the described lands except with the consent, in writing, of the Secretary of the Interior upon advice of the Fish and Wildlife Service as prescribed in 43 CFR 192.9 (12 F. R. 7334).

lessee, to posted prices and to other relevant matters and, whenever appropriate, after notice and opportunity to be heard.

(3) When paid in value, such royalties on production shall be due and payable monthly on the last day of the calendar month next following the calendar month in which produced. When paid in amount of production, such royalty products shall be delivered in merchantable condition on the premises where produced without cost to lessor, unless otherwise agreed to by the parties hereto, at such times and in such tanks provided by the lessee as reasonably may be required by the lessor, but in no case shall the lessee be required to hold such royalty oil or other products in storage beyond the last day of the calendar month next following the calendar month in which produced. The lessee shall not be responsible or held liable for the loss or destruction of royalty oil or other products in storage from causes over which he has no control.

(4) Royalties shall be subject to reduction on the entire leasehold or on any portion thereof segregated for royalty purposes if the Secretary of the Interior finds that the lease cannot be successfully operated upon the royalties fixed herein, or that such action will encourage the greatest ultimate recovery of oil or gas or promote conservation.

(e) *Contracts for disposal of products.*—Not to sell or otherwise dispose of oil, gas, natural gasoline, and other products of the lease except in accordance with a contract or other arrangement first approved by the Director of the Geological Survey or his representative, such approval to be subject to review by the Secretary of the Interior but to be effective unless and until revoked by the Secretary or the approving officer, and to file with such officer all contracts or full information as to other arrangements for such sales.

(f) *Statements, plats, and reports.*—At such times and in such form as the lessor may prescribe, to furnish detailed statements showing the amounts and quality of all products removed and sold from the lease, the proceeds therefrom, and the amounts used for production

purposes or unavoidably lost; a plat showing development work and improvements on the leased lands and a report with respect to stockholders, investment, depreciation, and costs.

(g) *Well records*.—To keep a daily drilling record, a log, and complete information on all well surveys and tests in form acceptable to or prescribed by the lessor of all wells drilled on the leased lands, and an acceptable record of all subsurface investigations affecting said lands, and to furnish them, or copies thereof to the lessor when required.

(h) *Inspection*.—To keep open at all reasonable times for the inspection of any duly authorized officer of the Department, the leased premises and all wells, improvements, machinery, and fixtures thereon and all books, accounts, maps, and records relative to operations and surveys or investigations on the leased lands or under the lease.

(i) *Payments*.—Unless otherwise directed by the Secretary of the Interior, to make rental, royalty, or other payments to the lessor, to the order of the Treasurer of the United States, such payments to be tendered to the Director of the Bureau of Land Management, Washington 25, D. C.

(j) *Diligence—Prevention of waste—Health and safety of workmen*.—To exercise reasonable diligence in drilling and producing the wells herein provided for unless consent to suspend operations temporarily is granted by the lessor; to carry on all operations in accordance with approved methods and practice as provided in the operating regulations, having due regard for the prevention of waste of oil or gas or damage to deposits or formations containing oil, gas, or water or to coal measures or other mineral deposits, for conservation of gas energy, for the preservation and conservation of the property for future productive operations, and for the health and safety of workmen and employees; to plug properly and effectively all wells before abandoning the same; to carry out at expense of the lessee all reasonable orders of the lessor relative to the matters in this paragraph, and that on

failure of the lessee so to do the lessor shall have the right to enter on the property and to accomplish the purpose of such orders at the lessee's cost; Provided, that the lessee shall not be held responsible for delays or casualties occasioned by causes beyond lessee's control.

(k) *Taxes and wages—Freedom of purchase.*—To pay when due, all taxes lawfully assessed and levied under the laws of the State or the United States upon improvements, oil, and gas produced from the lands hereunder, or other rights, property, or assets of the lessee; to accord all workmen and employees complete freedom of purchase, and to pay all wages due workmen and employees at least twice each month in the lawful money of the United States.

(l) *Nondiscrimination.*—Not to discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and to require [fol. 153] an identical provision to be included in all subcontracts.

(m) *Assignment of oil and gas lease or interest therein.*—To file within 90 days from the date of final execution any instrument of transfer made of this lease, or any interest therein, including assignments of record title, working or royalty interests, operating agreements and subleases for approval, such instrument to take effect upon its final approval by the Director, Bureau of Land Management, as of the first day of the lease month following the date of filing in the proper land office.

(n) *Pipe lines to purchase or convey at reasonable rates and without discrimination.*—If owner, or operator, or owner of a controlling interest in any pipe line or of any company operating the same which may be operated accessible to the oil or gas derived from lands under this lease, to accept and convey and, if a purchaser of such products, to purchase at reasonable rates and without discrimination the oil or gas of the Government or of any citizen or company not the owner of any pipe line, operating a lease or purchasing or selling oil, gas, natural gasoline, or other prod-

ucts obtained under a lease or permit granted by the United States.

(o) *Reserved deposits.*—To comply with all statutory requirements and regulations thereunder, if the lands embraced herein have been or shall hereafter be disposed of under the laws reserving to the United States the deposits of oil and gas therein, subject to such conditions as are or may hereafter be provided by the laws reserving such oil or gas.

(p) *Overriding royalties.*—To limit the obligation to pay overriding royalties or payments out of production in excess of 5 per cent to periods during which the average production per well per day is more than 15 barrels on an entire leasehold or any part of the area thereof or any zone segregated for the computation of royalties.

(q) *Deliver premises in cases of forfeiture.*—To deliver up the premises leased, with all permanent improvements thereon, in good order and condition in case of forfeiture of this lease; but this shall not be construed to prevent the removal, alteration, or renewal of equipment and improvements in the ordinary course of operations.

(r) *Reserved lands.*—If any of the land included in this lease is reserved or designated for any particular purpose, the lessee shall conduct operations hereunder in conformity with such requirements as may be made by the appropriate agency official for the protection and use of the land for the purpose for which it was reserved or designated, so far as may be consistent with the use of the land for the purposes of this lease, which latter shall be regarded as the dominant use unless otherwise provided herein or separately stipulated.

(s) *Protection of property.*—To conduct all operations authorized by this lease with due regard for [fol. 154] good land management; not to cut or destroy timber without first obtaining permission from the appropriate agency official, and to pay for all such timber cut or destroyed at rates prescribed by such official; to avoid unnecessary damage to improvements, timber, crops or other cover; whenever prac-

licable, to control soil erosion resulting from the operation; *the* prevent pollution of soil and water resources; unless otherwise authorized by the appropriate agency official, not to drill any, well within 200 feet of any building standing on the leased land; whenever required in writing to fence all sump holes and other excavations made by lessee; and unless otherwise authorized by such official, to bury all pipe lines below plow depth.

(t) *Forest, brush and grass fire precautions.*—To do all in his power to prevent and suppress forest, brush or grass fires on the leased land and in its vicinity, and to require his employees, contractors and subcontractors and employees of contractors and subcontractors to do likewise. Unless prevented by circumstances over which he has no control, the lessee shall place his employees, contractors, subcontractors, and employees of contractors and subcontractors employed on the leased land at the disposal of the appropriate agency official for the purpose of fighting forest brush, or grass fires, with the understanding that payment for such services shall be made at rates to be determined by the official which rates shall not be less than the current rates of pay prevailing in the vicinity for services of a similar character; *Provided*, That if the lessee, his employees, contractors, subcontractors, or employees of contractors or subcontractors caused or could have prevented the origin or spread of the said fire or fires, no payment shall be made for services so rendered.

During periods of serious fire danger to forest, brush, or grass, as may be specified by the appropriate agency official, the lessee shall prohibit smoking and the building of camp and lunch fires by his employees, contractors, subcontractors, and employees of contractors or subcontractors within the leased area except at established camps, and shall enforce this prohibition by all means within his power; *Provided*, That the appropriate agency official may designate safe places where, after all inflammable material has been cleared away, camp fires may be built for the purpose

of *hearing* lunches and where, at the option of the lessee smoking may be permitted.

The lessee shall not burn rubbish, trash, or other inflammable material except with the consent of the appropriate agency official and shall not use explosives in such manner as to scatter inflammable materials on the surface of the land during the forest, brush, or grass fire season, except as authorized to do so or on areas approved by such official.

The lessee shall build or construct such fire lines or do such clearing on the leased land as the appropriate agency official decides is necessary for forest, brush, and grass fire prevention and shall maintain such fire [fol. 155] tools at his headquarters on the leased land as are deemed necessary by such official.

(u) *Damage to property.*—To pay the lessor or his tenant, as the case may be, for any and all damage to or destruction of property caused by lessee's operations hereunder; to save and hold the lessor harmless from all damage or claims for damage to persons or property resulting from the lessee's operations under this lease; and where the surface of the leased land is owned by other than the lessor, to pay such owner, or his tenant, as the case may be, for damage or injury to live stock, crops, trees, pipe lines, buildings, and other improvements on the leased land.

(v) *Restoration of surface of land.*—Upon any partial or total relinquishment, cancellation or expiration of lease, lessee shall, as to that part of the leased land as to which his rights have terminated, and to the extent deemed necessary by the appropriate agency official fill all sump holes, ditches and other excavations, remove or cover all debris, and shall, so far as reasonably possible, restore the surface of the leased land to its former condition.

(w) *Appropriate agency official.*—To address all matters relating to this section to *Delta National Wildlife Refuge, Fish and Wildlife Service, at Washington 25, D. C.*, who is hereby appointed the appropriate official of the United States agency having control of the land.

(x) *Local agent.*—To appoint and maintain at all

times during the term of this lease a local agent upon whom may be served written orders or notices respecting matters contained in this section, and within 15 days after the date of this lease to inform the appropriate agency official, in writing the name and address of such agent. If a substitute agency is appointed, lessee shall immediately so inform the said official.

(y) *Water wells.*—In case the lessee strikes water while drilling instead of oil or gas or abandons a well drilled as a water well, the right to purchase the casing in any such well at the reasonable salvage value thereof is expressly reserved by the United States.

[fol. 156] Sec. 3. The lessor expressly reserves:

(a) *Rights reserved—Easements and rights-of-way.*—The right to permit for joint or several use easements or rights-of-way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same or of other lands containing the deposits described in the act, and the treatment and shipment of products thereof by or under authority of the Government, its lessees or permittees, and for other public purposes.

(b) *Disposition of surface.*—The right to lease, sell, or otherwise dispose of the surface of any of the lands embraced within this lease which are owned by the United States under existing law or laws hereafter enacted, insofar as said surface is not necessary for the use of the lessee in the extraction and removal of the oil and gas therein.

(c) *Monopoly and fair prices.*—Full power and authority to promulgate and enforce all orders necessary to insure the sale of the production of the leased lands to the United States and to the public at reasonable prices, to protect the interests of the United States, to prevent monopoly, and to safeguard the public welfare.

(d) *Helium.*—The ownership and the right to extract helium from all gas produced under this lease,

subject to such rules and regulations as shall be prescribed by the Secretary of the Interior. In case the lessor elects to take the helium the lessee shall deliver all gas containing same, or portion thereof desired, to the lessor at any point on the leased premises in the manner required by the lessor, for the extraction of the helium in such plant or reduction works for that purpose as the lessor may provide; upon the residue shall be returned to the lessor with no substantial delay in the delivery of gas from the well to the purchaser thereof. The lessee shall not suffer a diminution of value of the gas from which the helium has been extracted, or loss otherwise, for which he is not reasonably compensated, save for the value of the helium extracted. The lessor further reserves the right to erect, maintain, and operate any and all reduction works and other equipment necessary for the extraction of helium on the premises leased.

(e) *Taking of royalties.*—All rights pursuant to section 36 of the act of February 25, 1920 (41 Stat. 437, 30 U. S. C. sec. 181 et seq.), as amended, to take royalties in amount or in value of production.

(f) *Fissionable materials.*—All fissionable source materials, together with the right, at any and all times, to enter upon the lands and prospect for, mine and remove such materials, pursuant to Executive Order 9908 (12 F. R. 8223).

Sec. 4. *Undivided fractional interest.*—Where the interest of the United States in the oil and gas underlying [fol. 157] any tract or tracts described in section 1 hereof is an undivided fractional interest, the following terms and conditions shall apply:

(a) *Rentals and royalties payable on account of each such tract shall be in the same proportion to the rentals and royalties provided for in the schedule attached to this lease as the undivided fractional interest of the United States in the oil and gas underlying such tract is to the full fee simple interest.*

(b) *If, during the period this lease is in effect, the*

lessee owns or holds under lease other undivided fractional interests in oil and gas underlying such tract, the right of the lessor to extract helium in accordance with section 3 (d) of this lease shall extend to all gas produced on the basis of such ownership or lease.

Sec. 5. *Drilling and producing restrictions.*—It is covenanted and agreed that the rate of prospecting and developing and the quantity and rate of production from the lands covered by this lease shall be subject to control in the public interest by the Secretary of the Interior, and in the exercise of his judgment the Secretary may take into consideration, among other things, Federal laws, State laws, and regulations issued thereunder, or lawful agreements among operators regulating either drilling or production, or both. After unitization, the Secretary of the Interior, or any person, committee, or State or Federal officer or agency so authorized in the unit plan, may alter or modify from time to time, the rate of prospecting and development and the quantity and rate of production from the lands covered by this lease.

Sec. 6. *Surrender and termination of lease.*—The lessee may surrender this lease or any legal subdivision thereof by filing with the Director, Bureau of Land Management, Washington, D. C., a written relinquishment, in triplicate, which shall be effective as of the date of filing subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to place all wells on the land to be relinquished in condition for suspension or abandonment in accordance with the regulations and the terms of the lease, to be accompanied by a statement that all wages and moneys due and payable to the workmen employed on the land relinquished have been paid.

Sec. 7. *Purchase of materials, etc., on termination of lease.*—Upon the expiration of this lease, or the earlier termination thereof pursuant to the last preceding section, the lessor or another lessee may, if the lessor shall so elect within 3 months from the termination of the lease, purchase all materials, tools, machinery, appliances, structures, and equipment placed in or upon the land by the lessee, and in use thereon as a necessary or useful part of

an operating or producing plant, on the payment to the lessee of such sum as may be fixed as a reasonable price [fol. 158] therefor by a board of three appraisers, one of whom shall be chosen by the lessor, one by the lessee, and the other by the two so chosen; pending such election all equipment shall remain in normal position. If the lessor, or another lessee, shall not within 3 months elect to purchase all or any part of such materials, tools, machinery, appliances, structures, and equipment, the lessee shall have the right at any time, within a period of 90 days thereafter to remove from the premises all the material, tools, machinery, appliances, structures, and equipment which the lessor shall not have elected to purchase, save and except casing in wells and other equipment or apparatus necessary for the preservation of the well or wells. Any materials, tools, machinery, appliances, structures, and equipment, including casing in or out of wells on the leased lands, shall become the property of the lessor, on expiration of the period of 90 days above referred to or such extension thereof as may be granted on account of adverse climatic conditions throughout said period.

Sec. 8. Proceedings in case of default.—If the lessee shall not comply with any of the provisions of the act or the regulations thereunder or make default in the performance or observance of any of the terms, covenants, and stipulations hereof and such default shall continue for a period of 30 days after service of written notice thereof by the lessor, the lease may be canceled by the Secretary of the Interior in accordance with the act, and all materials, tools, machinery, appliances, structures, equipment and wells shall thereupon become the property of the lessor, except that if said lease covers lands known to contain valuable deposits of oil or gas, the lease may be canceled only by judicial proceedings in accordance with the act; but this provision shall not be construed to prevent the exercise by the lessor of any legal or equitable remedy which the lessor might otherwise have. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of this lease for any other cause of forfeiture, or for the same cause occurring at any other time.

Sec. 9. *Heirs and successors in interest*—It is further covenanted and agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

Sec. 10. *Unlawful interest*—It is also further agreed that no Member of, or Delegate to, Congress, or Resident Commissioner, after his election or appointment, or either before or after he has qualified, and during his continuance in office; and that no officer, agent, or employee of the Department of the Interior, shall be admitted to any share or part in this lease or derive any benefit that may arise therefrom; and the provisions of Section 3741 of the Re- [fol. 159] vised Statutes of the United States, and Sections 114, 115, and 116 of the Codification of the Penal Laws of the United States approved March 4, 1909 (35 Stat. 1109), relating to contracts, enter into and form a part of this lease so far as the same may be applicable.

In Witness Whereof:

° The United States of America, For the Director.

(S.) Herbert L. Brooks, Chief, Branch of Minerals, Division of Adjudication. (S.) Allen L. Lobrano.

On behalf of the United States this lease is hereby re-executed effective as of the date of the lease.

(S.) Marion Clawson, Director, Bureau of Land Management.

(S.) A. A. Bargar, 726 Fern St., New Orleans 18, La.
(S.) Harris S. Anderson, 316 Oakley Drive, Shreveport, La. Witnesses to signature of Lessee.

[fol. 160]

SCHEDULE "A"

Rentals and Royalties

Rentals.—To pay the lessor in advance on the first day of the month in which the lease issues a rental at the following rates:

(a) If the lands are wholly outside the known geologic structure of a producing oil or gas field:

(1) For the first lease year, a rental of 50 cents per acre.

(2) For the second and third lease years, no rental.

(3) For the fourth and fifth years, 25 cents per acre.

(4) For the sixth and each succeeding year, 50 cents per acre.

(b) On leases wholly or partly within the geologic structure of a producing oil or gas field:

(1) Beginning with the first lease year after 30 days' notice that all or part of the land is included in such a structure and for each year thereafter, prior to a discovery of oil or gas on the lands herein, \$1 per acre.

(2) On the lands committed to an approved cooperative or unit plan which includes a well capable of producing oil or gas and contains a general provision for allocation of production, for the lands not within the participating area an annual rental of 50 cents per acre for the first and each succeeding lease year following discovery.

[fol. 161] *Minimum royalty.*—To pay the lessor in lieu of rental at the expiration of each lease year after discovery a minimum royalty of \$1 per acre or, if there is production, the difference between the actual royalty paid during the year and the prescribed minimum royalty of \$1 per acre, provided that on unitized leases, the minimum royalty shall be payable only on the participating acreage.

Royalty on production.—To pay the lessor 12½ per cent

royalty on the production removed or sold from the leased lands.

The average production per well per day for oil and for oil and for gas shall be determined pursuant to 30 CFR, Part 221, "Oil and Gas Operating Regulations."

In determining the amount or value of gas and liquid products produced, the amount or value shall be net after an allowance for the cost of manufacture. The allowance for cost of manufacture may exceed two-thirds of the amount or value of any product only on approval by the Secretary of the Interior.

[fols. 161A-191] CLERK'S NOTE RE MINERAL LEASES

"The following additional mineral leases have not been printed for the reason that they are of like purport to the mineral lease which has just been set forth:

(a) Mineral lease from the United States to Frank J. Lobrano dated March 1, 1949 (pages 132-146 of the certified transcript);

(b) Mineral lease from the United States to Allen L. Lobrano (pages 162-176 of the certified transcript); and

(c) Mineral lease from the United States to Allen L. Lobrano dated March 1, 1949 (pages 177-191 of the certified transcript)."

[fol. 192] COPY OF COMPLAINT FILED IN TWENTY-FIFTH
JUDICIAL DISTRICT COURT—U. S. 15

TWENTY-FIFTH JUDICIAL DISTRICT COURT, STATE OF LOUISIANA,
PARISH OF PLAQUEMINES

(S.) Pauline C. Hebert, Deputy Clerk.

No. 3282

Filed August 13, 1953

THE LEITER MINERALS, INC.

VS.

THE CALIFORNIA COMPANY, ET AL.

To The Honorable, The Judge of the Twenty-Fifth Judicial District Court for the Parish of Plaquemines:

The petition of The Leiter Minerals, Inc., a Louisiana corporation domiciled in Calcasieu Parish, Louisiana, appearing herein through its President, W. John Tessier, and its Vice-president, Mrs. Thomas Leiter, hereinafter sometimes designated "petitioner", with respect represents that:

1

Defendants are:

The California Company, a corporation organized and existing under and by virtue of the laws of the State of California, but authorized to do and actually doing business in the State of Louisiana, with Lucius M. Lamar, New Orleans, Louisiana, as its registered agent for the service of legal process in the State of Louisiana; and Allen L. Loblano, a resident of Plaquemines Parish, Louisiana.

[fol. 193]

2

Petitioner is the true and lawful owner of the following described real right, and immovable property, hereinafter set forth and described, to-wit:

All of the oil, gas and other minerals, and all of the oil, gas and mineral rights in, on or that may be under

the following described land located in Plaquemines Parish, Louisiana, to-wit:

Part of the fractional Southeast Quarter (frl. SE $\frac{1}{4}$) of fractional Section Ten (10); part of the Southeast Quarter of the fractional Northeast Quarter (SE $\frac{1}{4}$ Frl. NE $\frac{1}{4}$) and part of the South one-half (S $\frac{1}{2}$) of fractional Section Eleven (11); part of the North one-half (N $\frac{1}{2}$) and all of the South one-half (S $\frac{1}{2}$) of Section Twelve (12); all of fractional Section Thirteen (13) lying Northwest of Main Pass; all of Section Fourteen (14); part of the North one-half (N $\frac{1}{2}$) and all of the South one-half (S $\frac{1}{2}$) of Section Fifteen (15); part of the Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$), part of the Southwest Quarter of the Northwest Quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$), and part of the South one-half (S $\frac{1}{2}$) of fractional Section Sixteen (16); part of the Southeast Quarter (SE $\frac{1}{4}$) of the fractional Northeast Quarter (NE $\frac{1}{4}$), and part of the Southeast Quarter (SE $\frac{1}{4}$) of fraction Section Seventeen (17); part of [fol. 194] the North one-half (N $\frac{1}{2}$), and all of the fractional South one-half (S $\frac{1}{2}$) of fractional Section Nineteen (19), lying Northeast of the 40 arpent Line; part of the North one-half (N $\frac{1}{2}$), and all of the Southeast Quarter (SE $\frac{1}{4}$) of Section Twenty (20); all of Section Twenty-one (21); all of section Twenty two (22) all of the North one-half (N $\frac{1}{2}$), and all of the fractional South one-half (S $\frac{1}{2}$) of fractional Section Twenty-three (23); lying Northwest of Main Pass; all of fractional Section Twenty-four (24) lying Northwest of Main Pass; all of fractional Section Twenty-six (26), lying Northwest of Main Pass; all of Section Twenty seven (27); all of Section Twenty-eight (28); the fractional Northeast Quarter (NE $\frac{1}{4}$) of fractional Section Thirty (30), lying Northeast of the 40-arpent Line; the fractional West one-half of the Northeast Quarter (W $\frac{1}{2}$ NE $\frac{1}{4}$) and the fractional Northwest Quarter (NW $\frac{1}{4}$) of fractional Section Thirty-two (32), lying Northeast of the 40-Arpent Line; the East one-half (E $\frac{1}{2}$), the East one-half of the West one-half

($E\frac{1}{4}$ $W\frac{1}{4}$), and the Southwest Quarter of the Southwest Quarter ($SW\frac{1}{4}$ $SW\frac{1}{4}$); of Section Thirty-three (33); the West one-half ($W\frac{1}{2}$), and the fractional East one-half ($E\frac{1}{2}$) of fractional Section Thirty four (34) lying Northwest of Main Pass: all of the above described lands being in Township Twenty (20) South, Range Nineteen (19) East, of the St. Helena Meridian.

Part of fractional Section Seven (7), lying Northwest of Main Pass, and all of the fractional North one-half ($N\frac{1}{2}$) of fractional Section Eighteen (18) lying Northwest of Main Pass, all in Township Twenty (20) South, Range Twenty (20) East, of the St. Helena Meridian.

All of Fractional Section Three (3) lying Northwest of Main Pass; all of fractional Section Four (4) lying Northeast of the 40-Arpent Line; and fractional Section Nine (9) lying Northeast of the 40-Arpent Line and Northwest of Main Pass: all in Township Twenty-one (21) South Range Nineteen (19) East, of the St. Helena Meridian.

All of the above described lands being bounded on the Southwest in part by the 40-Arpent Line, or the Northeast boundary of the Radial Sections, [fol. 195] bounded on the southeast in part by the northwest or left bank of Main Pass, and bounded on the north by the south boundary of lands now or formerly owned by the Grand Prairie Levee District and being more particularly described as follows:

Beginning at the Northwest corner of fractional Section 19, T 20 S. R 19 E, thence S $0^{\circ} 01'$ E 44.15 chs. to a point on the 40-Arpent Line, thence S $42^{\circ} 47'$ E 5.94 chs., thence S $41^{\circ} 23'$ E 13.95 chs., thence S $40^{\circ} 14'$ E 13.95 chs., thence S $37^{\circ} 27'$ E 13.11 chs. to the intersection of the division line between fractional Sections 19 and 30, T 20 S, R 19 E, with the 40-Arpent Line, thence East 9.76 chs. to the quarter corner between fractional Sections 19 and 30, T 20 S, R 19 E, thence South 12.19 chs. to the 40-Arpent Line, thence S 40°

23' E 13.12 chs. thence S 42° 58' E 5.48 chs., thence S 42° 58' E 8.47 chs., thence S 44° 23' E 10.68 chs. to the intersection of the center line of Section 30 T 20 S, R 19 E with the 40-Arpent Line, thence East 14.48 chains along the center line of said Section 30 to the Southeast corner of the NE $\frac{1}{4}$ of said Section 30, T 20 S, R 19 E, thence North 40 chs. to the Southeast corner of fractional Section 19, T 20 S, R 19 E, thence North 40 chs. to Northeast corner of the SE $\frac{1}{4}$ of said fractional Section 19 T 20 S, R 19 E, thence East 40 chs. to the center of Section 20, T 20 S, R 19 E, thence South 40 chs. to the Quarter corner between Section 20 and fractional Section 29, T 20 S, R 19 E, thence East 40 chs. to the Northeast corner of Fractional Section 29, T. 20 S, R 19 E, thence South 80 chs. along the division line between Section 28 and fractional Section 29, T 20 S, R 19 E, to the southeast corner of Fractional Section 29, T 20 S, R 19 E, thence East 20 chs. along the division line between Sections 28 and 33, T 20 S, R 19 E, thence South 60 chs. to the Northeast corner of the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 33, T 20 S, R 19 E, thence West 20 chs. to the NW corner of SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Section 33, T 20 S, R 19 E, thence S 0° 01' W 20 chs. to the Southwest corner of said Section 33, T 20 S, R 19 E, thence South 6.24 chs. to a point on the 40-arpent Line, thence S 32° 00' E 11.18 chs., thence S 32° 00' E 14.00 chs., thence S 32° 00' E 14.00 chs., [fols. 196-197] thence S 32° 00' E 14.00 chs., thence S 32° 00' E 14.00 chs., thence S 28° 0' E 13.97 chs., thence S 25° 00' E 4.93 chs., thence S 25° 00' E 9.07 chs., thence S 25° 00' E 14.00 chs., thence S 25° 26' E 14.00 chs., thence S 27° 00' E 14. chs., thence S 27° 0' E 10.99 chs., to the intersection of the 40-Arpent Line with the left bank of Main Pass, thence down the left bank of Main Pass with its meanders thereof 22.74 chs. to the point of intersection of the division line between fractional Sections 9 and 10, T 21 S, R 19 E lying Northwest of Main Pass with the left bank of Main Pass, thence North 34.68 chs., to the Southeast corner of fractional Section 4,

T 21 S, R 19 E, thence East 14.98 chs. along the division line between fractional Sections 3 and 10, T 21 S, R 19 E, lying Northwest of Main Pass, to the left bank of Main Pass, thence down the left bank of Main Pass with its meanders thereof 157.71 chs. to the intersection of the division line between fractional Sections 34 and 35, T 20 S, R 19 E, lying Northwest of Main Pass, with the left bank of Main Pass, thence North 16.37 chs. to the Southeast corner of Section 27, T 20 S, R 19 E, thence East along the division line between fractional Sections 26 and 35, T 20 S, R 19 E, lying Northwest of Main Pass, 14.41 chs. to the left bank of Main Pass, thence down the left bank of Main Pass with its meanders thereof 241.07 chs. to the intersection of the division line between fractional section 13 T 20 S, R 19 E and fractional Section 18, T 20 S, R 20 E., lying Northwest of Main Pass, with the left bank of Main Pass, thence North 11.93 chs. along said division line to the Southeast corner of the NE $\frac{1}{4}$ of said fractional Section 13, T 20 S, R 19 E, thence East 14.49 chs. along the center line of fractional Section 18 T 20 S, R 20 E to the left bank of Main Pass, thence down the left bank of Main Pass with its meanders thereof 106.38 chs. to an inch and a quarter (1 $\frac{1}{2}$ ") iron pipe embedded in a terra cotta pipe, and supported by a concrete base marked "2" and a U. S. B. S. standard concrete post marked "22, R 20 E, T 20 S., S. 7, SMC 1936" and situate on the left bank of Main Pass in the eastern boundary of fractional Section 7, T 20 S, R 19 E, Northwest of Main Pass, from which iron pipe, U. S. C. & G. S. triangulation station "Main" bears S 23° 22' W 25.73 chs. distant, and also from said iron pipe, the intersection of the line between fractional Sections 7 and 18, T 20 S,

[fol. 198] thence S 33° 01' W 7.49 chs. to a point on the division line between fractional section 17 and Section 20, T 20 S, R 19 E, thence passing within said Section 20 T 20 S, R 19 E, S 33° 01' W 2.07 chs., thence S 32° 59' W 28.40 chs., thence S 72° 28'

W 24.82 chs., thence N 52° 58' W 5.47 chs., to a point on the division line between fractional Section 19 and Section 20, T 20 S, R 19 E, thence passing within said fractional Section 19, T 20 S, R 19 E N 52° 58' W 3.35 chs., thence N 52° 59' W 4.87 chs., thence N 52° 58' W 10.88 chs., thence N 52° 56' W 4.33 chs., thence N. 71° 01' W 47.91 chs., to point on the division line between Section 18 and fractional Section 19, T 20 S, R 19 E, thence N 89° 56' W 16.02 chs., to the point of beginning, being the northwest corner of fractional section 19, T 20 S, R 19 E.

Also, in addition to the lands described above, a tract of land described as follows:

Beginning at the Southeast corner of the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of fractional Section 29, T 20 S, R 19 E, thence passing within fractional Section 32, T 20 S, R 19 E, south 39.99 chains, thence West 9.67 chains to a point on the 40-Arpent Line, thence N. 33° 30' W 3.88 chs., thence N 35° 00' W 14.00 chs., thence N 35° 00' W 14.00 chs., thence N 39° 39' W 3.06 chs. to the intersection of the division line between fractional Sections 29 and 32, T 20 S, R 19 E, with the 40-Arpent Line, thence along said division line S 89° 59' E 37.86 chs. to the point of beginning.

All of the above described lands contain in the aggregate 8,711 acres, more or less, all in accordance with map or survey of United States Department of Agriculture, Bureau of Biological Survey, dated November 27, 1937, attached hereto.

III

The aforesaid deed of December 21, 1938, from Thomas Leiter to the United States of America, contained the following stipulations with respect to ownership of the minerals beneath the above described property:

3

[fol. 199] Petitioner acquired the aforesaid real right, and immovable property, under the following chain of title going back to the common source of the title of petitioner

and of the claim or pretension of title of defendants, as follows:

1. By reservation contained in deed from Thomas Leiter to The United States of America, dated December 21, 1938, recorded in Plaquemines Parish, C. O. B. 92, Folio 468;

2. By deed from Thomas Leiter to Humble Oil and Refining Company, dated October 28, 1943, recorded in Plaquemines Parish, C. O. B. 112, Folio 479;

3. By deed, or act or rétransfer, by Humble Oil and Refining Company to Thomas Leiter, dated November 18, 1952, recorded in Plaquemines Parish, C. O. B. 165, Folio 346;

4. By deed from Thomas Leiter, acting by and through S. W. Plauche, Jr., his duly authorized agent and attorney in fact, to The Leiter Minerals, Inc., (Petitioner herein), dated November 24, 1952, recorded in Plaquemines Parish, C. O. B. 165, Folio 351.

5. By act of confirmation, ratification and conveyance by Thomas S. Leiter to The Leiter Minerals, Inc., dated December 26, 1952, recorded in Plaquemines Parish, C. O. B. 165, Folio 358.

Certified copies of the instruments referred to in this paragraph are annexed hereto and made part hereof.

4

Petitioner is not at the present time in actual possession of the said mineral rights, which are the real right, and immovable property sued for by petitioner herein, but defendants are at the present time and for some time have been in actual physical possession of the said real right, and immovable property, illegally and as possessors [fol. 200] in bad faith. Defendant, The California Company, is in such possession through its agents, employees and representatives.

5

On information and belief, petitioner, alleges that defendant, Allen L. Lobrano, purported to secure an oil, gas and mineral lease or leases from the United States of America on or about March 1, 1949; and further, on in-

formation and belief, petitioner avers that the said defendant, Allen L. Lobrano subleased or assigned the said mineral lease or leases thus acquired by him to defendant, The California Company, but retained or otherwise secured an interest in the nature of a mineral royalty interest in the oil, gas and minerals owned by petitioner and sued for herein. Still on information and belief, petitioner avers that the said Allen L. Lobrano likewise is in possession of the property sued for herein through The California Company, his sublessee or assignee, and individually as an alleged or pretended owner of his said mineral royalty interest.

6

Defendants are and for some time have been producing oil, gas, and other hydrocarbons, in large quantities on and from the property described in paragraph 2 of this petition, all of which is being and has been done illegally and without any right or authority from petitioner or petitioner's predecessors in title.

[fol. 201]

7

Petitioner further alleges that the rights of petitioner sued upon herein in and to all the oil, gas and other minerals under the lands described in paragraph 2 of this petition are imprescriptible by virtue of Act 315 of the Louisiana Legislature of 1940 (R. S. 9:5806), and that petitioner now owns all of the oil, gas and other minerals; and is the owner of all the oil, gas and mineral rights, in, on and under said lands.

8

Petitioner further alleges that the lands sold and transferred by the said Thomas Leiter to the United States of America were acquired by the United States by the said deed as prepared by it and dated December 21, 1938, for the sole purpose of establishing a game or wild life refuge; and the consideration paid by the United States did not cover the value of any mineral rights on said lands.

9

Petitioner desires, and is entitled to, and accounting from defendants of the total amount of oil, gas or other

hydrocarbons or other minerals taken or produced by defendants from the property described in paragraph 2; and petitioner is further entitled to a money judgment against the said defendants for the amount and value of the said minerals so taken by defendants without right or legal authority. Defendants, under the law, are and have been possessors in bad faith of the property involved in this suit.

[fol. 202]

10

Petitioner files contemporaneously herewith a notice of *lis pendens*, according to law.

11

The value of the property involved in this suit is in excess of \$5,000.00.

Wherefore, premises considered, petitioner prays that the defendants be duly served with a certified copy of this petition and cited to appear and answer hereto, according to law; and that after all legal delays and due proceedings had, there be judgment herein in favor of petitioner, The Leiter Minerals, Inc., and against said defendants, The California Company and Allen L. Lobrano, recognizing your said petitioner to be the fee simple, true and lawful owner of all of the oil, gas and minerals, and oil, gas and mineral rights in, on and under the land described in paragraph 2 of this petition; and recognizing that petitioner as such owner is entitled to the full and undisturbed possession of its said real right; and immovable property, and ordering the defendants, and each of them, to deliver possession of said property to petitioner.

Petitioner further prays for an accounting by each of the defendants of all oil, gas, minerals and other hydrocarbons which have been taken by defendants, or any of them, from the property described in paragraph 2 of this petition; and upon said accounting being duly and truly made, petitioner prays the Court to render in favor of petitioner and against the said defendants, a judgment for the amount or value thus shown to have been taken by [fol. 203] the said defendants or produced by said defendants, without any right or authority, together with

legal interest thereon from and after the date of judicial demand, until paid.

Petitioner further prays for all necessary orders and decrees in the premises; for costs; for full, general and equitable relief; and for judgment according to law.

The Leiter Minerals, Inc., By: W. John Tessier, W. John Tessier, President; By: Mrs. Thomas Leiter, Mrs. Thomas Leiter, Vice-President. Plache and Plache, By: S. W. Plache, Jr., Attorneys for Petitioner.

STATE OF LOUISIANA,
Parish of Orleans:

W. John Tessier, being by me first duly sworn, deposes and says:

That he is President of The Leiter Minerals, Inc., petitioner in the foregoing petition; and that all of the allegations of fact made in the foregoing petition are true and correct, except those allegations expressly made on information and belief, and that, as to these, affiant verily believes them to be true and correct.

W. John Tessier.

Sworn to and subscribed before me, at New Orleans, Louisiana, this seventh day of August, A. D., 1953.

John Douglas Maginnis, Notary Public.

[fols. 204-213] STATE OF RHODE ISLAND,
County of Newport:

Mrs. Thomas Leiter, being by me first duly sworn, deposes and says:

That she is Vice-President of The Leiter Minerals, Inc., petitioner in the foregoing petition; and that all of the allegations of fact made in the foregoing petition are true and correct, except those allegations expressly made on information and belief, and that, as to these, affiant verily believes them to be true and correct.

Mrs. Thomas Leiter.

Sworn to and subscribed before me, at Newport, Rhode Island, this first day of August, A. D., 1953:

Irma L. DeCotis, Notary Public.

[fol. 214] STATE OF WYOMING,
County of Laramie:

Know all men by these presents: that Thomas Leiter, husband of Marion Gates Leiter, a resident of Washington, D. C., does hereby and by these presents grant, bargain, sell, convey and deliver, with full guaranty of title and with complete transfer and subrogation of all rights and actions of warranty, unto Humble Oil & Refining Company, a corporation organized under the laws of the State of Texas and duly authorized to do business in the State of Louisiana, all of his right, title and interest in the oil, gas, sulphur and other minerals in and under the following described property, situated in Plaquemines Parish, State of Louisiana:

Part of the fractional Southeast Quarter (frl. SE $\frac{1}{4}$) of fractional Section Ten (10); part of the Southeast Quarter of the fractional Northeast Quarter (SE $\frac{1}{4}$ frl. NE $\frac{1}{4}$) and part of the South one-half (S $\frac{1}{2}$) of fractional Section Eleven (11); part of the North one half (N $\frac{1}{2}$) and all of the South one-half (S $\frac{1}{2}$) of Section Twelve (12); all of fractional Section Thirteen (13) lying Northwest of Main Pass; all of Section Fourteen (14); part of the North one-half (N $\frac{1}{2}$) and all of the South one-half (S $\frac{1}{2}$) of Section Fifteen (15); part of the Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$) part of the Southwest Quarter of the Northwest Quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$), and part of the South one-half (S $\frac{1}{2}$) of fractional Section Sixteen (16); part of the Southeast Quarter (SE $\frac{1}{4}$) of the fractional Northeast Quarter (NE $\frac{1}{4}$) and part of the Southeast Quarter (SE $\frac{1}{4}$) of fraction Section Seventeen (17); part of the North [fol. 215] one-half (N $\frac{1}{2}$), and all of the fractional

South one-half ($S\frac{1}{2}$) of fractional Section Nineteen (19), lying Northeast of the 40 arpent Line; part of the North one-half ($N\frac{1}{2}$), and all of the Southeast Quarter ($SE\frac{1}{4}$) of Section Twenty (20); all of Section Twenty-one (21); all of section Twenty two (22) all of the North one-half ($N\frac{1}{2}$), and all of the fractional South one-half ($S\frac{1}{2}$) of fractional Section Twenty-three (23), lying Northwest of Main Pass; all of fractional Section Twenty-four (24) lying Northwest of Main Pass; all of fractional Section Twenty-six (26), lying Northwest of Main Pass; all of Section Twenty-seven (27); all of Section Twenty-eight (28); the fractional Northeast Quarter ($NE\frac{1}{4}$) of fractional Section Thirty (30), lying Northeast of the 40-arpent Line; the fractional West one-half of the Northeast Quarter ($W\frac{1}{2} NE\frac{1}{4}$) and the fractional Northwest Quarter ($NW\frac{1}{4}$) of Fractional Section Thirty-two (32), lying Northeast of the 40-Arpent Line; the East one-half ($E\frac{1}{2}$), the East one-half of the West one-half ($E\frac{1}{4} W\frac{1}{4}$), and the Southwest Quarter of the Southwest Quarter ($SW\frac{1}{4} SW\frac{1}{4}$), of Section Thirty-three (33); the West one-half ($W\frac{1}{2}$), and the fractional East one-half ($E\frac{1}{2}$) of fractional Section Thirty-four (34) lying Northwest of Main Pass: all of the above described lands being in Township Twenty (20) South, Range Nineteen (19) East, of the St. Helena Meridian.

Part of fractional Section Seven (7), lying Northwest of Main Pass, and all of the fractional North one-half ($N\frac{1}{2}$) of fractional Section Eighteen (18) lying Northwest of Main Pass, all in Township Twenty (20) South, Range Twenty (20) East, of the St. Helena Meridian.

All of Fractional Section Three (3) lying Northwest of Main Pass; all of fractional Section Four (4) lying Northeast of the 40-Arpent Line; and fractional Section Nine (9) lying Northeast of the 40-Arpent Line and Northwest of Main Pass: all in Township Twenty-one (21) South Range Nineteen (19) East, of the St. Helena Meridian.

All of the above described lands being bounded on the Southwest in part by the 40-Arpent Line, or the

Northeast boundary of the Radial Sections, bounded [fol. 216] on the southeast in part by the northwest or left bank of Main Pass, and bounded on the north by the south boundary of lands now or formerly owned by the Grand Prairie Levee District and being more particularly described as follows:

Beginning at the Northwest corner of fractional Section 19, T 20 S, R 19 E, thence S $0^{\circ} 01'$ E 44.15 chs. to a point on the 40-Arpent Line, thence S $42^{\circ} 47'$ E 5.94 chs., thence S $41^{\circ} 23'$ E 13.95 chs., thence S $40^{\circ} 14'$ E 13.95 chs., thence S $37^{\circ} 27'$ E 13.11 chs. to the intersection of the division line between fractional Sections 19 and 30, T 20 S, R 19 E, with the 40-Arpent Line, thence East 9.76 chs. to the quarter corner between fractional Sections 19 and 30, T 20 S, R 19 E, thence South 12.19 chs. to the 40-Arpent Line, thence S $40^{\circ} 23'$ E 13.12 chs. thence S $42^{\circ} 58'$ E 5.48 chs., thence S $42^{\circ} 58'$ E 8.47 chs., thence S $44^{\circ} 23'$ E 10.68 chs. to the intersection of the center line of Section 30 T 20 S, R 19 E with the 40-Arpent Line, thence East 14.48 chains along the center line of said Section 30 to the Southeast corner of the NE $\frac{1}{4}$ of said Section 30, T 20 S, R 19 E, thence North 40 chs. to the Southeast corner of fractional Section 19, T 20 S, R 19 E, thence North 40 chs. to Northeast corner of the SE $\frac{1}{4}$ of said fractional Section 19 T 20 S, R 19 E, thence East 40 chs. to the center of Section 20, T 20 S, R 19 E, thence South 40 chs. to the Quarter corner between Section 20 and fractional Section 29, T 20 S, R 19 E, thence East 40 chs. to the Northeast corner of Fractional Section 29, T 20 S, R 19 E, thence South 80 chs. along the division line between Section 28 and fractional Section 29, T 20 S, R 19 E, to the southeast corner of fractional Section 29, T 20 S, R 19 E, thence East 20 chs. along the division line between Sections 28 and 33, T 20 S, R 19 E, thence South 60 chs. to the Northeast corner of the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 33, T 20 S, R 19 E, thence West 20 chs. to the NW corner of SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Section 33, T 20 S, R 19 E, thence S $0^{\circ} 01'$ W 20 chs. to the Southwest corner of said

Section 33, T 20 S, R 19 E, thence South 6.24 chs. to a point on the 40-Arpent Line, thence S $32^{\circ} 00'$ E 11.18 chs., thence S $32^{\circ} 00'$ E 14.00 chs., thence S $32^{\circ} 00'$ E [fol. 217] 14.00 chs., thence S $32^{\circ} 00'$ E 14.00 chs., thence S $32^{\circ} 00'$ E 14.00 chs., thence S $28^{\circ} 00'$ E 13.97 chs., thence S $25^{\circ} 00'$ E 4.93 chs., thence S $25^{\circ} 00'$ E 9.07 chs., thence S $25^{\circ} 00'$ E 14.00 chs., thence $25^{\circ} 26'$ E 14.00 chs., thence S $27^{\circ} 00'$ E 14.00 chs., thence S $27^{\circ} 00'$ E 10.99 chs., to the intersection of the 40-Arpent Line with the left bank of Main Pass, thence down the left bank of Main Pass with its meanders thereof 22.74 chs., to the point of intersection of the division line between fractional Sections 9 and 10, T 21 S, R 19 E lying Northwest of Main Pass with the left bank of Main Pass, thence North 34.68 chs. to the Southeast corner of fractional Section 4, T 21 S, R 19 E, thence East 14.98 chs. along the division line between fractional Sections 3 and 10, T 21 S, R 19 E, lying Northwest of Main Pass, to the left bank of Main Pass, thence down the left bank of Main Pass with its meanders thereof 157.71 chs. to the intersection of the division line between fractional Sections 34 and 35, T 20 S, R 19 E, lying Northwest of Main Pass, with the left bank of Main Pass, thence North 16.37 chs. to the Southeast corner of Section 27, T 20 S, R 19 E, thence East along the division line between fractional Sections 26 and 35, T 20 S, R 19 E, lying Northwest of Main Pass, 14.41 chs. to the left bank of Main Pass, thence down the left bank of Main Pass with its meanders thereof 241.07 chs. to the intersection of the division line between fractional Section 13 T 20 S, R 19 E and fractional Section 18, T 20 S, R 20 E, lying Northwest of Main Pass, with the left bank of Main Pass, thence North 11.93 chs. along said division line to the Southeast corner of the NE $\frac{1}{4}$ of said fractional Section 13, T 20 S, R 19 E, thence East 14.49 chs. along the center line of fractional Section 18 T 20 S, R 20 E, to the left bank of Main Pass, thence down the left bank of Main Pass with its meanders thereof 106.38 chs. to an inch and a quarter ($1\frac{1}{2}$ ") iron pipe embedded in a terra cotta pipe, and supported by a concrete base

marked "2" and a U. S. B. S. standard concrete post marked "22, R 20 E, T 20 S., S. 7, SMC 1936" and situate on the left bank of Main Pass in the eastern boundary of fractional Section 7, T 20 S, R 19 E, Northwest of Main Pass, from which iron pipe, U. S. C. & G. S. triangulation station "Main" bears S 23° 22' W 25.73 chs. distant, and also from said iron pipe, the intersection of the line between fractional Sections 7 and 18, T 20 S, R 20 E bears South 19° 17' W 57.84 [fol. 218] chs. distant; thence from said iron pipe and passing within said fractional Section 7, T 20 S, R 20 E, N 13° 53' W 10.63 chs., thence N 45° 08' W 10.91 chs., thence N 72° 09' W 12.21 chs., thence S 56° 14' W 6.85 chs., thence S 33° 01' W 6.90 chs., thence N 77° 45' W 15.99 chs., thence S 74° 36' W 5.83 chs., thence S 74° 31' W 8.06 chs. to a point on the division line between fractional Section 7, T 20 S, R 20 E and Section 12 T 20 S, R 19 E, thence passing within Section 12, T 20 S, R 19 E, S 74° 31' W 3.73 chs., thence S 34° 38' W 10.73 chs., thence S 71° 28' W 3.62 chs., thence N 65° 17' W 26.26 chs., thence S 78° 36' W 11.04 chs., thence S 78° 18' W 2.03 chs., thence N 42° 49' W 5.20 chs., thence S 75° 49' W 26.12 chs., thence S 39° 55' W 2.16 chs., to a point on the division line between fractional Section 11 and Section 12, T 20 S, R 19 E, thence passing within said fractional Section 11, T 20 S, R 19 E, S 39° 55' W 15.39 chs., thence S 10° 43' W 13.98 chs., thence N 88° 59' W 14.01 chs., thence S 44° 28' W 24.58 chs., thence S 86° 36' W 22.94 chs., thence N 83° 28' W 8.50 chs., thence S 59° 27' W 5.79 chs., to a point on the division line between fractional Sections 10 and 11, T 20 S, R 19 E, thence passing within said fractional Section 10, T 20 S, R 19 E S 59° 27' W 13.82 chs., thence S 67° 01' W 14.56 chs., thence S 67° 02' W 2.06 chs. to a point on the division line between fractional Section 10 and Section 15 T 20 S, R 19 E, thence passing within said Section 15, T 20 S, R 19 E S 67° 02' W 0.16 chs., thence S 66° 55' W 8.76 chs., thence S 40° 03' W 28.64 chs., thence S 75° 16' W 23.94 chs., thence S 20° 27' W 7.30 chs., to a point on the division line between Section 15 and fractional

Section 16, T 20 S, R 19 E, thence passing within fractional Section 16, T 20 S, R 19 E S $20^{\circ} 27' W$ 2.70 chs., thence S $20^{\circ} 52' W$ 6.81 chs., thence S $41^{\circ} 43' W$ 21.86 chs., thence N $50^{\circ} 29' W$ 22.39 chs., thence N $86^{\circ} 26' W$ 13.74 chs., thence N $86^{\circ} 18' W$ 14.98 chs., thence N $61^{\circ} 06' W$ 19.05 chs. to a point on the division line between fractional Sections 16 and 17, T 20 S, R 19 E, thence passing through said fractional Section 17, T 20 S, R 19 E, N $61^{\circ} 06' W$ 6.66 chs., thence S $58^{\circ} 15' W$ 18.82 chs., thence S $18^{\circ} 15' W$ 21.63 chs., thence S $17^{\circ} 27' W$ 2.54 chs., thence S $18^{\circ} 28' W$ 6.16 chs., thence S $33^{\circ} 01' W$ 7.49 chs. to a point on [fol. 219] the division line between fractional Section 17 and Section 20, T 20 S, R 19 E, thence passing within said Section 20 T 20 S, R 19 E, S $33^{\circ} 01' W$ 9.07 chs., thence S $32^{\circ} 59' W$ 28.40 chs., thence S $72^{\circ} 28' W$ 24.82 chs., thence N $52^{\circ} 58' W$ 5.47 chs., to a point on the division line between fractional Section 19 and Section 20, T 20 S, R 19 E, thence passing within said fractional Section 19, T 20 S, R 19 E N $52^{\circ} 58' W$ 3.35 chs., thence N $52^{\circ} 59' W$ 4.87 chs., thence N $52^{\circ} 58' W$ 10.88 chs., thence N $52^{\circ} 56' W$ 4.33 chs., thence N $71^{\circ} 01' W$ 47.91 chs., to a point on the division line between Section 18 and fractional Section 19, T 20 S, R 19 E, thence N $89^{\circ} 56' W$ 16.02 chs., to the point of beginning, being the northwest corner of fractional Section 19, T 20 S, R 19 E.

Also, in addition to the lands described above, a tract of land described as follows:

Beginning at the Southeast corner of the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of fractional Section 29, T 20 S, R 19 E, thence passing within fractional Section 32, T 20 S, R 19 E, south 39.99 chains, thence West 9.67 chains to a point on the 40-Arpent Line, thence N $33^{\circ} 30' W$ 3.88 chs., thence N $35^{\circ} 00' W$ 14.00 chs., thence N $35^{\circ} 00' W$ 14.00 chs., thence N $35^{\circ} 00' W$ 14.00 chs., thence N $39^{\circ} 39' W$ 3.06 chs. to the intersection of the division line between fractional Sections 29 and 32, T 20 S, R 19 E, with the 40-Arpent Line, thence along said division line S $8^{\circ} 59' E$ 37.86 chs. to the point of beginning.

All of the above described lands contain in the aggregate 8,711 acres, more or less, all in accordance

with map or survey or United States Department of Agriculture, Bureau of Biological Survey, dated November 27, 1937, attached hereto.

III

The aforesaid deed of December 21, 1938, from Thomas Leiter to the United States of America, contained the following stipulations with respect to ownership of the minerals beneath the above described property:

[fol. 220] it being the vendor's intention to convey all of his title and interest in and to the rights reserved by vendor in that certain deed executed by him in favor of the United States of America under date of December 21, 1938, as recorded in COB 92, Folio 468 of the Conveyance Records of the Parish of Plaquemines, State of Louisiana, and covering the above described property.

To have and to hold unto Humble Oil & Refining Company, its successors and assigns, forever.

This sale is made for and in consideration of the sum of Four Thousand (\$4,000.00) Dollars cash.

Thus done and signed on this the 28th day of October, 1943, in the presence of Mildred Bayer and J. M. Garrett, competent witnesses, who have hereunto signed their names.

Witnesses: (S.) Mildred Bayer, (S.) J. M. Garrett.

(S.) Thomas Leiter.

STATE OF WYOMING,

County of Laramie:

Before me, the undersigned authority, on this day personally appeared Thomas Leiter, who, being duly sworn, did, upon his oath, depose and say:

That he executed the foregoing instrument in the presence of Mildred Bayer and J. M. Garrett, competent witnesses, for the purposes and consideration therein expressed and as his own free act and deed.

[fol. 221] Given under my hand and seal of office this 28th day of October, 1943.

(S.) Grace Willoz, Notary Public.

Comm. expires 3/18/47.

Recorded in Plaquemines Parish
Conveyance Book 112, Fo. 479.

Parish of Plaquemines

I, the undersigned Clerk of Court and Ex-Officio Recorder of Mortgages and Register of Conveyances in and for this Parish, and State, do hereby certify that I have on this 7th day of January, 1953, duly registered in Conveyance Office Book No. 165, Folio 346, of this Parish, the Act of Retransfer by Humble Oil & Refining Company to Thomas Leiter

As per act acknowledged before Wayne Lehew, a Notary Public for the County of Harris, State of Texas, on the 18th day of November, 1952.

Given under my hand and seal of office at Pointe-a-la-Hache, Louisiana, this 7th day of January, 1953.

(S.) Edith F. Ansardi, Dy. Clerk of Court and Ex-Officio Recorder of Mortgages.

[fol. 222] STATE OF LOUISIANA,
Parish of Plaquemines:

Whereas, by deed dated December 21, 1938, as recorded in C. O. B. 92, Folio 468, of the Conveyance records of the Parish of Plaquemines, State of Louisiana, Thomas Leiter conveyed to the United States of America the following described property situated in Plaquemines Parish, State of Louisiana, to-wit:

Part of the fractional Southeast Quarter (frl. SE $\frac{1}{4}$) of fractional Section Ten (10); part of the Southeast Quarter of the fractional Northeast Quarter (SE $\frac{1}{4}$ Frl. NE $\frac{1}{4}$) and part of the South one-half (S $\frac{1}{2}$) of fractional Section Eleven (11); part of the North one-half (N $\frac{1}{2}$) and all of the South one-half (S $\frac{1}{2}$) of Section Twelve (12); all of fractional Section Thirteen (13) lying Northwest of Main Pass; all of Section Fourteen (14); part of the North one-half (N $\frac{1}{2}$) and all of the South one-half (S $\frac{1}{2}$) of Section Fifteen (15); part of the Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$), part of the Southwest Quarter of the Northwest Quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$), and part of the South one-half (S $\frac{1}{2}$) of fractional Section Sixteen

(16); part of the Southeast Quarter ($SE\frac{1}{4}$) of the fractional Northeast Quarter ($NE\frac{1}{4}$), and part of the Southeast Quarter ($SE\frac{1}{4}$) of fractional Section Seventeen (17); part of the North one-half ($N\frac{1}{2}$), and [fol. 223] all of the fractional South one-half ($S\frac{1}{2}$) of fractional Section Nineteen (19), lying Northeast of the 40 arpent Line; part of the North one-half ($N\frac{1}{2}$), and all of the Southeast Quarter ($SE\frac{1}{4}$) of Section Twenty (20); all of Section Twenty-one (21); all of section Twenty two (22) all of the North one-half ($N\frac{1}{2}$), and all of the fractional South one-half ($S\frac{1}{2}$) of fractional Section Twenty-three (23), lying Northwest of Main Pass; all of fractional Section Twenty-four (24) lying Northwest of Main Pass; all of fractional Section Twenty-six (26), lying Northwest of Main Pass; all of Section Twenty-seven (27); all of Section Twenty-eight (28); the fractional Northeast Quarter ($NE\frac{1}{4}$) of fractional Section Thirty (30), lying Northeast of the 40-arpent Line; the fractional West one-half of the Northeast Quarter ($W\frac{1}{2} NE\frac{1}{4}$) and the fractional Northwest Quarter ($NW\frac{1}{4}$) of fractional Section Thirty-two (32), lying Northeast of the 40-Arpent Line; the East one-half ($E\frac{1}{2}$), the East one-half of the West one-half ($E\frac{1}{2} W\frac{1}{2}$), and the Southwest Quarter of the Southwest Quarter ($SW\frac{1}{4} SW\frac{1}{4}$), of Section Thirty-three (33); the West one-half ($W\frac{1}{2}$), and the fractional East one-half ($E\frac{1}{2}$) of fractional Section Thirty-four (34) lying Northwest of Main Pass: all of the above described lands being in Township Twenty (20) South, Range Nineteen (19) East, of the St. Helena Meridian.

Part of fractional Section Seven (7), lying Northwest of Main Pass, and all of the fractional North one-half ($N\frac{1}{2}$) of fractional Section Eighteen (18) lying Northwest of Main Pass, all in Township Twenty (20) South, Range Twenty (20) East, of the St. Helena Meridian.

All of Fractional Section Three (3) lying Northwest of Main Pass: all of fractional Section Four (4) lying Northeast of the 40-Arpent Line; and fractional Section Nine (9) lying Northeast of the 40-Arpent Line and Northwest of Main Pass: all in Town-

ship Twenty-one (21) South Range Nineteen (19) East, of the St. Helena Meridian.

All of the above described lands being bounded on the Southwest in part by the 40-Arpent Line, or the Northeast boundary of the Radial Sections, bounded [fol. 224] on the southeast in part by the northwest or left bank of Main Pass, and bounded on the north by the south boundary of lands now or formerly owned by the Grand Prairie Levee District and being more particularly described as follows:

Beginning at the Northwest corner of fractional Section 19, T 20 S. R 19 E, thence S. $0^{\circ} 01' E$ 44.15 chs. to a point on the 40-Arpent Line, thence S $42^{\circ} 47' E$ 5.94 chs., thence S $41^{\circ} 23' E$ 13.95 chs., thence S $40^{\circ} 14' E$ 13.95 chs., thence S $37^{\circ} 27' E$ 13.11 chs. to the intersection of the division line between fractional Sections 19 and 30, T 20 S, R 19 E, with the 40-Arpent Line, thence East 9.76 chs. to the quarter corner between fractional Sections 19 and 30, T 20 S, R 19 E, thence South 12.19 chs. to the 40-Arpent Line, thence S $40^{\circ} 23' E$ 13.12 chs. thence S $42^{\circ} 58' E$ 5.48 chs., thence S $42^{\circ} 58' E$ 8.47 chs., thence S $44^{\circ} 23' E$ 10.68 chs. to the intersection of the center line of Section 30 T 20 S. R 19 E with the 40-Arpent Line, thence East 14.48 chains along the center line of said Section 30 to the Southeast corner of the NE $\frac{1}{4}$ of said Section 30, T 20 S, R 19 E, thence North 40 chs. to the Southeast corner of fractional Section 19, T 20 S, R 19 E, thence North 40 chs. to Northeast corner of the SE $\frac{1}{4}$ of said fractional Section 19 T 20 S, R 19 E, thence East 40 chs. to the center of Section 20, T 20 S, R 19 E, thence South 40 chs. to the Quarter corner between Section 20 and fractional Section 29, T 20 S, R 19 E, thence East 40 chs. to the Northeast corner of Fractional Section 29, T. 20 S, R 19 E, thence South 80 chs. along the division line between Section 28 and fractional Section 29, T 20 S, R 19 E, to the southeast corner of fractional Section 29, T 20 S, R 19 E, thence East 20 chs. along the division line between Sections 28 and 33, T 20 S, R 19 E, thence South 60 chs. to the Northeast corner of the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 33, T 20

S, R 19 E, thence West 20 chs. to the NW corner of SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Section 33, T 20 S, R 19 E, thence S 0° 01' W 20 chs. to the Southwest corner of said Section 33, T 20 S, R 19 E, thence South 6.24 chs. to a point on the 40-arpent Line, thence S 32° 00' E 11.18 chs., thence S 32° 00' E 14.00 chs., thence S 32° 00' E 14.00 chs., thence S 32° 00' E 14.00 chs., thence S 28° 00' E 13.97 chs., thence S 25° 00' E 4.93 chs., thence S 25° 00' E 9.07 chs., thence S 25° 00' E 14.00 chs., thence S 25° 26' E 14.00 chs., thence S 27° 00' E 14.00 chs., thence S 27° 00' E 10.99 chs., to the intersection of the 40-Arpent Line with the left bank of Main Pass, thence down the left bank of Main Pass with its meanders thereof 22.74 chs. to the point of intersection of the division line between fractional Sections 9 and 10, T 21 S, R 19 E lying Northwest of Main pass with the left bank of Main Pass, thence North 34.68 chs. to the Southeast corner of fractional Section 4, T 21 S, R 19 E, thence East 14.98 chs. along the division line between fractional Sections 3 and 10, T 21 S, R 19 E, lying Northwest of Main Pass, to the left bank of Main Pass, thence down the left bank of Main Pass with its meanders thereof 157.71 chs. to the intersection of the division line between fractional Sections 34 and 35, T 20 S, R 19 E, lying Northwest of Main Pass, with the left bank of Main Pass, thence North 16.37 chs. to the Southeast corner of Section 27, T 20 S, R 19 E, thence East along the division line between fractional Sections 26 and 35, T 20 S, R 19 E, lying Northwest of Main Pass, 14.41 chs. to the left bank of Main Pass, thence down the left bank of Main Pass with its meanders thereof 241.07 chs. to the intersection of the division line between fractional section 13 T 20 S, R 19 E and fractional Section 18, T 20 S, R 20 E, lying Northwest of Main Pass, with the left bank of Main Pass, thence North 11.93 chs. along said division line to the Southeast corner of the NE $\frac{1}{4}$ of said fractional Section 13, T 20 S, R 19 E, thence East 14.49 chs. along the center line of fractional Section 18 T 20 S, R 20 E to the left bank of Main Pass, thence down the left bank of Main Pass with its meanders

thereof 106.38 chs. to an inch and a quarter ($11\frac{1}{2}$ ") iron pipe embedded in a terra cotta pipe, and supported by a concrete base marked "2" and a U. S. B. S. standard concrete post marked "22, R 20 E, T 20 S. S. 7, SMC 1936" and situate on the left bank of Main Pass in the eastern boundary of fractional Section 7, T 20 S, R 19 E, Northwest of Main Pass, from which iron pipe, U. S. C. & G. S. triangulation station "Main" bears S $23^{\circ} 22' W$ 25.73 chs. distant, and also from said iron pipe, the intersection of the line between fractional Sections 7 and 18, T 20 S, R 20 E [fol. 226] bears South $19^{\circ} 17' W$ 57.84 chs. distant; thence from said iron pipe and passing within said fractional Section 7, T 20 S, R 20 E, N $13^{\circ} 53' W$ 10.63 chs., thence N $45^{\circ} 08' W$ 10.91 chs., thence N $72^{\circ} 09' W$ 12.21 chs., thence S $56^{\circ} 14' W$ 6.85 chs., thence S $33^{\circ} 01' W$ 6.90 chs., thence N $77^{\circ} 45' W$ 15.99 chs., thence S $74^{\circ} 36' W$ 5.83 chs., thence S $74^{\circ} 31' W$ 8.06 chs. to a point on the division line between fractional Section 7, T 20 S, R 20 E and Section 12 T 20 S, R 19 E, thence passing within Section 12, T 20 S, R 19 E, S $74^{\circ} 31' W$ 3.73 chs., thence S $34^{\circ} 38' W$ 10.73 chs., thence S $71^{\circ} 28' W$ 3.62 chs., thence N $65^{\circ} 17' W$ 26.26 chs., thence S $78^{\circ} 36' W$ 11.04 chs., thence S $78^{\circ} 18' W$ 2.03 chs., thence N $42^{\circ} 49' W$ 5.20 chs., thence S $75^{\circ} 49' W$ 26.12 chs., thence S $39^{\circ} 55' W$ 2.16 chs., to a point on the division line between fractional Section 11 and Section 12, T 20 S, R 19 E, thence passing within said fractional Section 11, T 20 S, R 19 E S $39^{\circ} 55' W$ 15.39 chs., thence S $16^{\circ} 43' W$ 13.98 chs., thence N $88^{\circ} 59' W$ 14.91 chs., thence S $44^{\circ} 28' W$ 24.58 chs., thence S $86^{\circ} 36' W$ 22.94 chs., thence N $83^{\circ} 28' W$ 8.50 chs., thence S $59^{\circ} 27' W$ 5.79 chs., to a point on the division line between fractional Sections 10 and 11, T 20 S, R 19 E, thence passing within said fractional Section 10, T 20 S, R 19 E S $59^{\circ} 27' W$ 13.82 chs., thence S $67^{\circ} 01' W$ 14.56 chs., thence S $67^{\circ} 02' W$ 2.06 chs. to a point on the division line between fractional Section 10 and Section 15 T 20 S, R 19 E, thence passing within said Section 15, T 20 S, R 19 E S $67^{\circ} 02' W$ 0.16 chs., thence S $66^{\circ} 55' W$ 8.76 chs., thence S $40^{\circ} 03' W$ 28.64 chs., thence S $75^{\circ} 16' W$ 23.94 chs.,

thence S $20^{\circ} 27'$ W 7.30 chs., to a point on the division line between Section 15 and fractional Section 16, T 20 S, R 19 E, thence passing within fractional Section 16, T 20 S, R 19 E S $20^{\circ} 27'$ W 2.70 chs., thence S $20^{\circ} 52'$ W 6.81 chs., thence S $41^{\circ} 43'$ W 21.86 chs., thence N $50^{\circ} 29'$ W 22.39 chs., thence N $86^{\circ} 26'$ W 13.74 chs., thence N $86^{\circ} 18'$ W 14.98 chs., thence N $61^{\circ} 06'$ W 19.05 chs. to a point on the division line between fractional Sections 16 and 17, T 20 S, R 19 E, thence passing through said fractional Section 17, T 20 S, R 19 E, N $61^{\circ} 06'$ W 6.66 chs., thence S $58^{\circ} 15'$ W 18.82 chs., thence S $18^{\circ} 15'$ W 21.63 chs., thence S $17^{\circ} 27'$ W 2.54 chs., thence S $18^{\circ} 28'$ W 6.16 chs., thence S 33° [fol. 227] $01'$ W 7.49 chs. to a point on the division line between fractional section 17 and Section 20, T 20 S, R 19 E, thence passing within said Section 20 T 20 S, R 19 E, S $33^{\circ} 01'$ W 2.07 chs., thence S $32^{\circ} 59'$ W 28.40 chs., thence S $72^{\circ} 28'$ W 24.82 chs., thence N $52^{\circ} 58'$ W 5.47 chs., to a point on the division line between fractional Section 19 and Section 20, T 20 S, R 19 E, thence passing within said fractional Section 19, T 20 S, R 19 E N $52^{\circ} 58'$ W 3.35 chs., thence N $52^{\circ} 59'$ W 4.87 chs., thence N $52^{\circ} 58'$ W 10.88 chs., thence N $52^{\circ} 56'$ W 4.33 chs., thence N $71^{\circ} 01'$ W 47.91 chs., to a point on the division line between Section 18 and fractional Section 19, T 20 S, R 19 E, thence N $89^{\circ} 56'$ W 16.02 chs., to the point of beginning, being the northwest corner of fractional section 19, T 20 S, R 19 E.

Also, in addition to the lands described above, a tract of land described as follows:

Beginning at the Southeast corner of the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of fractional Section 29, T 20 S, R 19 E, thence passing within fractional Section 32, T 20 S, R 19 E, south 39.99 chains, thence West 9.67 chains to a point on the 40-Arpent Line, thence N $33^{\circ} 30'$ W 3.88 chs., thence N $35^{\circ} 00'$ W 14.00 chs., thence N $35^{\circ} 00'$ W 14.00 chs., thence N $39^{\circ} 39'$ W 3.06 chs. to the intersection of the division line between fractional Sections 29 and 32, T 20 S, R 19 E, with the 40-Arpent Line, thence along said division line S $89^{\circ} 59'$ E 37.86 chs. to the point of beginning.

All of the above described lands contain in the aggregate 8,711 acres, more or less, all in accordance with map or survey of United States Department of Agriculture, Bureau of Biological Survey, dated November 27, 1937, attached hereto.

III

The aforesaid deed of December 21, 1938, from Thomas Leiter to the United States of America, contained the following stipulations with respect to ownership of the minerals beneath the above described property:

[fol. 228] subject, however, to certain reservations affecting the minerals. Said reservations are more fully set out in said deed, which is made a part hereof by reference; and

Whereas, by a deed dated October 28, 1943, as recorded in C. O. B. 112, Folio 479, entry 143 of the Conveyance Records of Plaquemines Parish, La., Thomas Leiter conveyed and transferred unto Humble Oil & Refining Company all of his rights, title and interest in and to the oil, gas, and other minerals in and under the above described tract of land, together with all of the incidental rights reserved by him in his deed of December 21, 1938, in favor of the United States of America; and

Whereas, Humble Oil & Refining Company desires to release, relinquish, and disclaim, in favor of Thomas Leiter his heirs and assigns, all of the rights which it acquired from the said Thomas Leiter.

Now, therefore, in consideration of the premises, Humble Oil & Refining Company herein represented by D. B. Harris, as Vice-President duly authorized, does hereby and by these presents, release, relinquish, and disclaim unto Thomas Leiter, his heirs and assigns, all of its right, title and interest in and to the oil, gas, and other minerals in and under the tract of land specifically described above, it being the intention of Humble Oil & Refining Company to release, relinquish, and disclaim all of the rights it acquired under its deed from Thomas Leiter and which are the same rights reserved by Thomas Leiter in his deed to [fol. 229] the United States of America.

Thus done and signed, on this-the 18th day of November, 1952.

Humble Oil & Refining Company, by: (S.) D. B. Harris, Attest: (S.) Elizabeth H. Kenney, Assistant Secretary.

Witnesses: (S.) Gene T. Kluier, (S.) Truitt V. Lively.

STATE OF TEXAS,
County of Harris:

Before me, the undersigned authority, on this day personally appeared D. B. Harris, to me personally known, who, being by me duly sworn, did depose and say:

That he is the Vice President of Humble Oil & Refining Company and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and the said D. B. Harris acknowledged said instrument to be the free act and deed of said corporation.

Given under my hand and seal of office this 18th day of November A. D., 1952.

My commission expires June 1, 1953.

(S.) Wayne Lebew, Notary Public in and for Harris County, Texas.

Parish of Plaquemines

I, the undersigned Clerk of Court and Ex-Officio Recorder of Mortgages and Register of Conveyances in and for this Parish, and State, do hereby certify that I have on this 7th [fol. 230] day of January, 1953, duly registered in Conveyance Office Book No. 165, Folio 351, of this Parish, the Act of Transfer by Thomas Leiter to The Leiter Minerals, Inc.

As per act acknowledged before A. L. Pläuche, a Notary Public for the Parish of Calcasieu, on the 24th day of November, 1952.

Given under my hand and seal of office at Pointe-a-la Hache, Louisiana, this 7th day of January, 1953.

(S.) Edith F. Ansardi, Dy. Clerk of Court and Ex-Officio Recorder of Mortgages.

STATE OF LOUISIANA,
Parish of Calcasieu:

Know all men by these presents that I, Thomas Leiter, a resident of Newport, Rhode Island, hereinafter sometimes designated "First Party," and herein represented by S. W. Plauche, Jr., duly authorized by written power of attorney and authority dated October 15th, 1952, do hereby, and by these presents, and for good, valuable and sufficient consideration, transfer, convey, sell, assign, bargain and deliver unto The Leiter Minerals, Inc., a Louisiana corporation with its domicile in Calcasieu Parish, Louisiana, all of my rights, titles and interests in and to all of the minerals and mineral rights on, under, affecting, or that may [fol. 231] be connected with, the following described property situated in Plaquemines Parish, Louisiana, to-wit:

Part of the fractional Southeast Quarter (frl. SE $\frac{1}{4}$) of fractional Section Ten (10); part of the Southeast Quarter of the fractional Northeast Quarter (SE $\frac{1}{4}$ Frl. NE $\frac{1}{4}$) and part of the South one-half (S $\frac{1}{2}$) of fractional Section Eleven (11); part of the North one-half (N $\frac{1}{2}$) and all of the South one-half (S $\frac{1}{2}$) of Section Twelve (12); all of fractional Section Thirteen (13) lying Northwest of Main Pass; all of Section Fourteen (14); part of the North one-half (N $\frac{1}{2}$) and all of the South one-half (S $\frac{1}{2}$) of Section Fifteen (15); part of the Southeast Quarter of the Northeast Quarter (SE $\frac{1}{4}$ NE $\frac{1}{4}$) part of the Southwest Quarter of the Northwest Quarter (SW $\frac{1}{4}$ NW $\frac{1}{4}$), and part of the South one-half (S $\frac{1}{2}$) of fractional Section Sixteen (16); part of the Southeast Quarter (SE $\frac{1}{4}$) of the fractional Northeast Quarter (NE $\frac{1}{4}$), and part of the Southeast Quarter (SE $\frac{1}{4}$) of fractional Section Seventeen (17); part of the North one-half [fol. 232] (N $\frac{1}{2}$), and all of the fractional South one-half (S $\frac{1}{2}$) of fractional Section Nineteen (19), lying Northeast of the 40 arpent Line; part of the North one-half (N $\frac{1}{2}$), and all of the Southeast Quarter (SE $\frac{1}{4}$) of Section Twenty (20); all of Section Twenty-one (21); all of section Twenty-two (22); all of the North one-half (N $\frac{1}{2}$), and all of the fractional South

one-half ($S\frac{1}{2}$) of fractional Section Twenty-three (23), lying Northwest of Main Pass; all of fractional Section Twenty-four (24) lying Northwest of Main Pass; all of fractional Section Twenty-six (26), lying Northwest of Main Pass; all of Section Twenty-seven (27); all of Section Twenty-eight (28); the fractional Northeast Quarter ($NE\frac{1}{4}$) of fractional Section Thirty (30), lying Northeast of the 40-arpent Line; the fractional West one-half of the Northeast Quarter ($W\frac{1}{2} NE\frac{1}{4}$) and the fractional Northwest Quarter ($NW\frac{1}{4}$) of fractional Section Thirty-two (32), lying Northeast of the 40-Arpent Line; the East one-half ($E\frac{1}{2}$), the East one-half of the West one-half ($E\frac{1}{2} W\frac{1}{2}$), and the Southwest Quarter of the Southwest Quarter ($SW\frac{1}{4} SW\frac{1}{4}$), of Section Thirty-three (33); the West one-half ($W\frac{1}{2}$), and the fractional East one-half ($E\frac{1}{2}$) of fractional Section Thirty-four (34) lying Northwest of Main Pass; all of the above described lands being in Township Twenty (20) South, Range Nineteen (19) East, of the St. Helena Meridian.

Part of fractional Section Seven (7), lying Northwest of Main Pass, and all of the fractional North one-half ($N\frac{1}{2}$) of fractional Section Eighteen (18) lying Northwest of Main Pass, all in Township Twenty (20) South, Range Twenty (20) East, of the St. Helena Meridian.

All of Fractional Section Three (3) lying Northwest of Main Pass; all of fractional Section Four (4) lying Northeast of the 40-Arpent Line; and fractional Section Nine (9) lying Northeast of the 40-Arpent Line and Northwest of Main Pass; all in Township Twenty-one (21) South Range Nineteen (19) East, of the St. Helena Meridian.

All of the above described lands being bounded on the Southwest in part by the 40-Arpent Line, or the Northeast boundary of the Radial Sections, bounded [fol. 233] on the southeast in part by the northwest or left bank of Main Pass, and bounded on the north by the south boundary of lands now or formerly owned by the Grand Prairie Levee District and being more particularly described as follows:

Beginning at the Northwest corner of fractional Section 19, T 20 S. R 19 E, thence S $0^{\circ} 01'$ E 44.15 chs. to a point on the 40-Arpent Line, thence S $42^{\circ} 47'$ E 5.94 chs., thence S $41^{\circ} 23'$ E 13.95 chs., thence S $40^{\circ} 14'$ E 13.95 chs., thence S $37^{\circ} 27'$ E 13.11 chs. to the intersection of the division line between fractional Sections 19 and 30, T 20 S, R 19 E, with the 40-Arpent Line, thence East 9.76 chs. to the quarter corner between fractional Sections 19 and 30, T 20 S, R 19 E, thence South 12.19 chs. to the 40-Arpent Line, thence S $40^{\circ} 23'$ E 13.12 chs. thence S $42^{\circ} 58'$ E 5.48 chs., thence S $42^{\circ} 58'$ E 8.47 chs., thence S $44^{\circ} 23'$ E 10.68 chs. to the intersection of the center line of Section 30 T 20 S. R 19 E with the 40-Arpent Line, thence East 14.48 chains along the center line of said Section 30 to the Southeast corner of the NE $\frac{1}{4}$ of said Section 30, T 20 S, R 19 E, thence North 40 chs. to the South east corner of fractional Section 19, T 20 S, R 19 E, thence North 40 chs. to Northeast corner of the SE $\frac{1}{4}$ of said fractional Section 19 T 20 S, R 19 E, thence East 40 chs. to the center of Section 20, T 20 S, R 19 E, thence South 40 chs. to the Quarter corner between Section 20 and fractional Section 29, T 20 S, R 19 E, thence East 40 chs. to the Northeast corner of Fractional Section 29, T 20 S, R 19 E, thence South 80 chs. along the division line between Section 28 and fractional Section 29, T 20 S, R 19 E, to the southeast corner of fractional Section 29, T 20 S, R 19 E, thence East 20 chs. along the division line between Sections 28 and 33, T 20 S, R 19 E, thence South 60 chs. to the Northeast corner of the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 33, T 20 S, R 19 E, thence West 20 chs. to the NW corner of SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Section 33, T 20 S, R 19 E, thence S $0^{\circ} 01'$ W 20 chs. to the Southwest corner of said Section 33, T 20 S, R 19 E, thence South 6.24 chs. to a point on the 40-arpent Line, thence S $32^{\circ} 00'$ E 11.18 chs., thence S $32^{\circ} 00'$ E 14.00 chs., thence S $32^{\circ} 00'$ E 14.00 chs., thence S $32^{\circ} 00'$ E 14.00 [fol. 234] chs., thence S $32^{\circ} 00'$ E 14.00 chs., thence S $28^{\circ} 00'$ E 13.97 chs., thence S $25^{\circ} 00'$ E 4.93 chs., thence S $25^{\circ} 00'$ E 9.07 chs., thence S $25^{\circ} 00'$ E 14.00 chs., thence S $25^{\circ} 26'$ E 14.00 chs., thence S $27^{\circ} 00'$ E 14.00 chs., thence

S 27° 00' E 10.99 chs., to the intersection of the 40-Arpent Line with the left bank of Main Pass, thence down the left bank of Main Pass with its meanders thereof 22.74 chs. to the point of intersection of the division line between fractional Sections 9 and 10, T 21 S, R 19 E lying Northwest of Main pass with the left bank of Main Pass, thence North 34.68 chs. to the Southeast corner of fractional Section 4, T 21 S, R 19 E, thence East 14.98 chs. along the division line between fractional Sections 3 and 10, T 21 S, R 19 E, lying Northwest of Main Pass, to the left bank of Main Pass, thence down the left bank of Main Pass with its meanders thereof 157.71 chs. to the intersection of the division line between fractional Sections 34 and 35, T 20 S, R 19 E, lying Northwest of Main Pass, with the left bank of Main Pass, thence North 16.37 chs. to the Southeast corner of Section 27, T 20 S, R 19 E, thence East along the division line between fractional Sections 26 and 35, T 20 S, R 19 E, lying Northwest of Main Pass, 14.41 chs. to the left bank of Main Pass, thence down the left bank of Main Pass with its meanders thereof 241.07 chs. to the intersection of the division line between fractional section 13 T 20 S, R 19 E and fractional Section 18, T 20 S, R 20 E, lying Northwest of Main Pass, with the left bank of Main Pass, thence North 11.93 chs. along said division line to the Southeast corner of the NE $\frac{1}{4}$ of said fractional Section 13, T 20 S, R 19 E, thence East 14.49 chs. along the center line of fractional Section 18 T 20 S, R 20 E to the left bank of Main Pass, thence down the left bank of Main Pass with its meanders thereof 106.38 chs. to an inch and a quarter ($\frac{1}{2}$ ") iron pipe embedded in a terra cotta pipe, and supported by a concrete base marked "2" and a U. S. B. S. standard concrete post marked "22, R 20 E, T 20 S., S.7, SMC 1936" and situate on the left bank of Main Pass in the eastern boundary of fractional Section 7, T 20 S, R 19 E, Northwest of Main Pass, from which iron pipe, U. S. C. & G. S. triangulation station "Main" bears S 23° 22' W 25.73 chs. distant, and also from said iron pipe, the intersection of

the line between fractional Sections 7 and 18, T 20 S, [fol. 235] R 20 E bears South $19^{\circ} 17' W$ 57.84 chs. distant; thence from said iron pipe and passing within said fractional Section 7 T 20 S, R 20 E, N $13^{\circ} 53' W$ 10.63 chs., thence N $45^{\circ} 08' W$ 10.91 chs., thence N $72^{\circ} 09' W$ 12.21 chs., thence S $56^{\circ} 14' W$ 6.85 chs., thence S $33^{\circ} 01' W$ 6.90 chs., thence N $77^{\circ} 45' W$ 15.99 chs., thence S $74^{\circ} 36' W$ 5.83 chs., thence S $74^{\circ} 31' W$ 8.06 chs. to a point on the division line between fractional Section 7, T 20 S, R 20 E and Section 12 T 20 S, R 19 E, thence passing within Section 12, T 20 S, R 19 E, S $74^{\circ} 31' W$ 3.73 chs., thence S $34^{\circ} 38' W$ 10.73 chs., thence S $71^{\circ} 28' W$ 3.62 chs., thence N $65^{\circ} 17' W$ 26.26 chs., thence S $78^{\circ} 36' W$ 11.04 chs., thence S $78^{\circ} 18' W$ 2.03 chs., thence N $42^{\circ} 49' W$ 5.20 chs., thence S $75^{\circ} 49' W$ 26.12 chs., thence S $39^{\circ} 55' W$ 2.16 chs., to a point on the division line between fractional Section 11 and Section 12, T 20 S, R 19 E, thence passing within said fractional Section 11, T 20 S, R 19 E, S $39^{\circ} 55' W$ 15.39 chs., thence S $10^{\circ} 43' W$ 13.98 chs., thence N $88^{\circ} 59' W$ 14.01 chs., thence S $44^{\circ} 28' W$ 24.58 chs., thence S $86^{\circ} 36' W$ 22.94 chs., thence N $83^{\circ} 28' W$ 8.50 chs., thence S $59^{\circ} 27' W$ 5.79 chs., to a point on the division line between fractional Sections 10 and 11, T 20 S, R 19 E, thence passing within said fractional Section 10, T 20 S, R 19 E, S $59^{\circ} 27' W$ 13.82 chs., thence S $67^{\circ} 01' W$ 14.56 chs., thence S $67^{\circ} 02' W$ 2.06 chs. to a point on the division line between fractional Section 10 and Section 15 T 20 S, R 19 E, thence passing within said Section 15, T 20 S, R 19 E, S $67^{\circ} 02' W$ 0.16 chs., thence S $66^{\circ} 55' W$ 8.76 chs., thence S $40^{\circ} 03' W$ 28.64 chs., thence S $75^{\circ} 16' W$ 23.94 chs., thence S $20^{\circ} 27' W$ 7.30 chs., to a point on the division line between Section 15 and fractional Section 16, T 20 S, R 19 E, thence passing within fractional Section 16, T 20 S, R 19 E, S $20^{\circ} 27' W$ 2.70 chs., thence S $20^{\circ} 52' W$ 6.81 chs., thence S $41^{\circ} 43' W$ 21.86 chs., thence N $50^{\circ} 29' W$ 22.39 chs., thence N $86^{\circ} 26' W$ 13.74 chs., thence N $86^{\circ} 18' W$ 14.98 chs., thence N $61^{\circ} 06' W$ 19.05 chs. to a point on the division line between fractional Sections 16 and 17, T 20 S, R 19 E, thence passing through said fractional

Section 17, T 20 S, R 19 E, N 61° 06' W 6.66 chs., thence S 58° 15' W 18.82 chs., thence S 18° 15' W 21.63 chs., thence S 17° 27' W 2.54 chs., thence S 18° 28' W 6.16 chs., thence S 33° 01' W 7.49 chs. to a point [fol. 236] on the division line between fractional section 17 and Section 20, T 20 S, R 19 E, thence passing within said Section 20 T 20 S, R 19 E, S 33° 01' W 2.07 chs., thence S 32° 59' W 28.40 chs., thence S 72° 28' W 24.82 chs., thence N 52° 58' W 5.47 chs., to a point on the division line between fractional Section 19 and Section 20, T 20 S, R 19 E, thence passing within said fractional Section 19, T 20 S, R 19 E, N 52° 58' W 3.35 chs., thence N 52° 59' W 4.87 chs., thence N 52° 58' W 10.88 chs., thence N 52° 56' W 4.33 chs., thence N. 71° 01' W 47.91 chs., to a point on the division line between Section 18 and fractional Section 19, T 20 S, R 19 E, thence N 89° 56' W 16.02 chs., to the point of beginning, being the northwest corner of fractional section 19, T 20 S, R 19 E.

Also, in addition to the lands described above, a tract of land described as follows:

Beginning at the Southeast corner of the SW¹/₄ of SE¹/₄ of fractional Section 29, T 20 S, R 19 E, thence passing within fractional Section 32, T 20 S, R 19 E, south 39.99 chains, thence West 9.67 chains to a point on the 40-Arpent Line, thence N 33° 30' W 3.88 chs., thence N 35° 00' W 14.00 chs., thence N 35° 00' W 14.00 chs., thence N 39° 39' W 3.06 chs. to the intersection of the division line between fractional Sections 29 and 32, T 20 S, R 19 E, with the 40-Arpent Line, thence along said division line S 89° 59' E 37.86 chs. to the point of beginning.

All of the above described lands contain in the aggregate 8,711 acres, more or less, all in accordance with map or survey of United States Department of Agriculture, Bureau of Biological Survey, dated November 27, 1937, attached hereto.

IV

The aforesaid deed of December 21, 1938, from Thomas Leiter to the United States of America, contained the fol-

lowing stipulations with respect to ownership of the minerals beneath the above described property:

[fol. 237] To have and to hold the above-described premises together with all and singular, the rights and appurtenances thereto in anywise belonging, to the said The Leiter Minerals, Inc., and to its heirs and assigns forever; and I do hereby bind myself, my heirs, executors and administrators, to warrant and forever defend, all and singular, the said premises unto the said The Leiter Minerals, Inc., its heirs and assigns, against any person whomsoever lawfully claiming or to claim the same or any part thereof.

Thus done and signed by and on behalf of First Party, and by and on behalf of The Leiter Minerals, Inc., at Lake Charles, Louisiana, on this, the 24th day of November, A. D., 1952, in the presence of the witnesses hereinafter named and undersigned.

Thomas Leiter, by (S.) S. W. Plauche, Jr., S. W. Plauche, Jr., duly authorized First Party, The Leiter Minerals, Inc., by (S.) Doris Wise, Doris Wise, Secretary-Treasurer.

Witnesses: (S.) Nellie Skinner, (S.) Juanita Landry.
[fol. 238] STATE OF LOUISIANA,

Parish of Calcasieu:

Before me, the undersigned authority, this day personally came and appeared Nellie Skinner, to me known to be the identical person whose name is subscribed to the foregoing instrument as an attesting witness, and who, being first duly sworn, on her oath says:

That she subscribed her name to the foregoing instrument as a witness; and that she knows S. W. Plauche, Jr., who signed the said instrument for and on behalf of Thomas Leiter, and that she knows Doris Wise, the person who signed the instrument for and on behalf of The Leiter Minerals, Inc. to be the identical persons described in the aforesaid instrument, and that the said S. W. Plauche, Jr., and Doris Wise, respectively, executed the said instrument in their aforesaid capacities, and that she saw each of the said persons sign the same as their voluntary act and deed,

and that she, the said Nellie Skinner subscribed her name to the same at the same time as an attesting witness.

(S.) Nellie Skinner.

Sworn to and subscribed before me at Lake Charles, Louisiana, on this 24th day of November, A. D., 1952.

(S.) A. L. Plauche, Notary Public, Calcasieu Parish, Louisiana. (Seal.)

[fol. 239] STATE OF LOUISIANA,
Parish of Plaquemines:

I, the undersigned Clerk of Court and Ex-Officio Recorder of Mortgages and Register of Conveyances in and for this Parish, and State, do hereby certify that I have on this 7th day of January, 1953, duly registered in Conveyance Office Book No. 165, Folio 358, of this Parish, the Act of Confirmation, Ratification & Conveyance by Thomas Leiter to The Leiter Minerals, Inc.

As per act acknowledged before H. R. Ashman, a Notary Public for the County of Aiken, State of South Carolina, on the 27th day of December, 1952.

Given under my hand and seal of office at Pointe-a-la-Hache, Louisiana, this 7th day of January, 1953.

(S.) Edith F. Ansardi, Dy. Clerk of Court and Ex-Officio Recorder of Mortgages.

Be it known by this agreement That on December 21st, 1938, by deed recorded in Plaquemines Parish C. O. B. 92, Folio 468, Thomas Leiter conveyed to the United States of America, the following described property situated in Plaquemines Parish, Louisiana, to-wit:

Part of the fractional Southeast Quarter (frl. SE $\frac{1}{4}$) of fractional Section Ten (10); part of the Southeast Quarter of the fractional Northeast Quarter (SE $\frac{1}{4}$ Frl. NE $\frac{1}{4}$) and part of the South one-half (S $\frac{1}{2}$) of fractional Section Eleven (11); part of the North one-half (N $\frac{1}{2}$) and all of the South one-half (S $\frac{1}{2}$) of Section Twelve (12); all of fractional Section Thirteen

(13) lying Northwest of Main Pass; all of Section Fourteen (14); part of the North one-half ($N\frac{1}{2}$) and all of the South one-half ($S\frac{1}{2}$) of Section Fifteen (15); part of the Southeast Quarter of the Northeast Quarter ($SE\frac{1}{4} NE\frac{1}{4}$), Part of the Southwest Quarter of the Northwest Quarter ($SW\frac{1}{4} NW\frac{1}{4}$), and part of the South one-half ($S\frac{1}{2}$) of fractional Section Sixteen (16); part of the Southeast Quarter ($SE\frac{1}{4}$) of the fractional Northeast Quarter ($NE\frac{1}{4}$), and part of the Southeast Quarter ($SE\frac{1}{4}$) of fraction Section Seventeen (17); part of the North one-half ($N\frac{1}{2}$), and [fol. 240] all of the fractional South one-half ($S\frac{1}{2}$) of fractional Section Nineteen (19), lying Northeast of the 40 arpent Line; part of the North one-half ($N\frac{1}{2}$), and all of the Southeast Quarter ($SE\frac{1}{4}$) of Section Twenty (20); all of Section Twenty-one (21); all of section Twenty two (22) all of the North one-half ($N\frac{1}{2}$), and all of the fractional South one-half ($S\frac{1}{2}$) of fractional Section Twenty-three (23); lying Northwest of Main Pass; all of fractional Section Twenty-four (24) lying Northwest of Main Pass; all of fractional Section Twenty-six (26), lying Northwest of Main Pass; all of Section Twenty-seven (27); all of Section Twenty-eight (28); the fractional Northeast Quarter ($NE\frac{1}{4}$) of fractional Section Thirty (30), lying Northeast of the 40-arpent Line; the fractional West one-half of the Northeast Quarter ($W\frac{1}{2} NE\frac{1}{4}$), and the fractional Northwest Quarter ($NW\frac{1}{4}$) of fractional Section Thirty-two (32), lying Northeast of the 40-Arpent Line; the East one-half ($E\frac{1}{2}$), the East one-half of the West one-half ($E\frac{1}{4} W\frac{1}{4}$), and the Southwest Quarter of the Southwest Quarter ($SW\frac{1}{4} SW\frac{1}{4}$), of Section Thirty-three (33); the West one-half ($W\frac{1}{2}$), and the fractional East one-half ($E\frac{1}{2}$) of fractional Section Thirty-four (34) lying Northwest of Main Pass: all of the above described lands being in Township Twenty (20) South, Range Nineteen (19) East, of the St. Helena Meridian.

Part of fractional Section Seven (7), lying Northwest of Main Pass, and all of the fractional North one-half ($N\frac{1}{2}$) of fractional Section Eighteen (18) lying

Northwest of Main Pass, all in Township Twenty (20) South, Range Twenty (20) East, of the St. Helena Meridian.

All of Fractional Section Three (3) lying Northwest of Main Pass; all of fractional Section Four (4) lying Northeast of the 40-Arpent Line; and fractional Section Nine (9) lying Northeast of the 40-Arpent Line and Northwest of Main Pass: all in Township Twenty-one (21) South Range Nineteen (19) East, of the St. Helena Meridian.

All of the above described lands being bounded on the Southwest in part by the 40-Arpent Line, or the Northeast boundary of the Radial Sections, bounded [fol. 241] on the southeast in part by the northwest or left bank of Main Pass, and bounded on the north by the south boundary of lands now or formerly owned by the Grand Prairie Levee District and being more particularly described as follows:

Beginning at the Northwest corner of fractional Section 19, T 20 S. R 19 E, thence S $0^{\circ} 01'$ E 44.15 chs. to a point on the 40-Arpent Line, thence S $42^{\circ} 47'$ E 5.94 chs., thence S $41^{\circ} 23'$ E 13.95 chs., thence S $40^{\circ} 14'$ E 13.95 chs., thence S $37^{\circ} 27'$ E 13.11 chs. to the intersection of the division line between fractional Sections 19 and 30, T 20 S, R 19 E, with the 40-Arpent Line, thence East 9.76 chs. to the quarter corner between fractional Sections 19 and 30, T 20 S, R 19 E, thence South 12.19 chs. to the 40-Arpent Line, thence S $40^{\circ} 23'$ E 13.12 chs. thence S $42^{\circ} 58'$ E 5.48 chs., thence S $42^{\circ} 58'$ E 8.47 chs., thence S $44^{\circ} 23'$ E 10.68 chs. to the intersection of the center line of Section 30 T 20 S. R 19 E with the 40-Arpent Line, thence East 14.48 chains along the center line of said Section 30 to the Southeast corner of the NE $\frac{1}{4}$ of said Section 30, T 20 S, R 19 E, thence North 40 chs. to the Southeast corner of fractional Section 19, T 20 S, R 19 E, thence North 40 chs. to Northeast corner of the SE $\frac{1}{4}$ of said fractional Section 19 T 20 S, R 19 E, thence East 40 chs. to the center of Section 20, T 20 S, R 19 E, thence South 40 chs. to the Quarter corner between Section 20 and fractional Section 29, T 20 S, R 19 E,

thence East 40 chs. to the Northeast corner of Fractional Section 29, T. 20 S, R 19 E, thence South 80 chs. along the division line between Section 28 and fractional Section 29, T 20 S, R 19 E, to the southeast corner of fractional Section 29, T 20 S, R 19 E, thence East 20 chs. along the division line between Sections 28 and 33, T 20 S, R 19 E, thence South 60 chs. to the Northeast corner of the SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 33, T 20 S, R 19 E, thence West 20 chs. to the NW corner of SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of said Section 33, T 20 S, R 19 E, thence S 0° 01' W 20 chs. to the Southwest corner of said Section 33, T 20 S, R 19 E, thence South 6.24 chs. to a point on the 40-arpent Line, thence S 32° 00' E 11.18 chs., thence S 32° 00' E 14.00 chs., thence S 32° 00' E 14.00 chs., thence S 32° 00' E 14.00 chs., [fol. 242] thence S 32° 00' E 14.00 chs., thence S 28° 00' E 13.97 chs., thence S 25° 00' E 4.93 chs., thence S 25° 00' E 9.07 chs., thence S 25° 00' E 14.00 chs., thence S 25° 26' E 14.00 chs., thence S 27° 00' E 14.00 chs., thence S 27° 00' E 10.99 chs., to the intersection of the 40-Arpent Line with the left bank of Main Pass, thence down the left bank of Main Pass with its meanders thereof 22.74 chs. to the point of intersection of the division line between fractional Sections 9 and 10, T 21 S, R 19 E lying Northwest of Main pass with the left bank of Main Pass, thence North 34.68 chs. to the Southeast corner of fractional Section 4, T 21 S, R 19 E, thence East 14.98 chs. along the division line between fractional Sections 3 and 10, T 21 S, R 19 E, lying Northwest of Main Pass, to the left bank of Main Pass, thence down the left bank of Main Pass with its meanders thereof 157.71 chs. to the intersection of the division line between fractional Sections 34 and 35, T 20 S, R 19 E, lying Northwest of Main Pass, with the left bank of Main Pass, thence North 16.37 chs. to the Southeast corner of Section 27, T 20 S, R 19 E, thence East along the division line between fractional Sections 26 and 35, T 20 S, R 19 E, lying Northwest of Main Pass, 14.41 chs. to the left bank of Main Pass, thence down the left bank of Main Pass with its meanders thereof 241.07 chs. to the intersection of the division line between fractional section 13 T 20 S,

R 19 E and fractional Section 18, T 20 S, R 20 E, lying Northwest of Main Pass, with the left bank of Main Pass, thence North 11.93 chs. along said division line to the Southeast corner of the NE $\frac{1}{4}$ of said fractional Section 13, T 20 S, R 19 E, thence East 14.49 chs. along the center line of fractional Section 18 T 20 S, R 20 E to the left bank of Main Pass, thence down the left bank of Main Pass, with its meanders thereof 106.38 chs. to an inch and a quarter ($1\frac{1}{2}$ ") iron pipe embedded in a terra cotta pipe, and supported by a concrete base marked "2" and a U. S. B. S. standard concrete post marked "22, R 20 E, T 20 S., S. 7, SMC 1936" and situate on the left bank of Main Pass in the eastern boundary of fractional Section 7, T 20 S, R 19 E, Northwest of Main Pass; from which iron pipe, U. S. C. & G. S. triangulation station "Main" bears S $23^{\circ} 22'$ W 25.73 chs. distant, and also from said iron pipe, the intersection of the line between fractional Sections 7 and 18, T [fol. 243] 20 S, R 20 E bears South $19^{\circ} 17'$ W 57.84 chs. distant; thence from said iron pipe and passing within said fractional Section 7, T 20 S, R 20 E, N $13^{\circ} 53'$ W 10.63 chs., thence N $45^{\circ} 08'$ W 10.91 chs., thence N $72^{\circ} 09'$ W 12.21 chs., thence S $56^{\circ} 14'$ W 6.85 chs., thence S $33^{\circ} 01'$ W 6.90 chs., thence N $77^{\circ} 45'$ W 15.99 chs., thence S $74^{\circ} 36'$ W 5.83 chs., thence S $74^{\circ} 31'$ W 8.06 chs. to a point on the division line between fractional Section 7, T 20 S, R 20 E and Section 12 T 20 S, R 19 E, thence passing within Section 12, T 20 S, R 19 E, S $74^{\circ} 31'$ W 3.73 chs., thence S $34^{\circ} 38'$ W 10.73 chs., thence S $71^{\circ} 28'$ W 3.62 chs., thence N $65^{\circ} 17'$ W 26.26 chs., thence S $78^{\circ} 36'$ W 11.04 chs., thence S $78^{\circ} 18'$ W 2.03 chs., thence N $42^{\circ} 49'$ W 5.20 chs., thence S $75^{\circ} 49'$ W 26.12 chs., thence S $39^{\circ} 55'$ W 2.16 chs., to a point on the division line between fractional Section 11 and Section 12, T 20 S, R 19 E, thence passing within said fractional Section 11, T 20 S, R 19 E S $39^{\circ} 55'$ W 15.39 chs., thence S $10^{\circ} 43'$ W 13.98 chs., thence N $88^{\circ} 59'$ W 14.01 chs., thence S $44^{\circ} 28'$ W 24.58 chs., thence S $86^{\circ} 36'$ W 22.94 chs., thence N $83^{\circ} 28'$ W 8.50 chs., thence S $59^{\circ} 27'$ W 5.79 chs., to a point on the division line between fractional Sections 10 and 11, T 20 S, R 19 E, thence passing within said fractional Section 10,

T 20 S, R 19 E S 59° 27' W 13.82 chs., thence S 67° 01' W 14.56 chs., thence S 67° 02' W 2.06 chs. to a point on the division line between fractional Section 10 and Section 15 T 20 S, R 19 E, thence passing within said Section 15, T 20 S, R 19 E S 67° 02' W 0.16 chs., thence S 66° 55' W 8.76 chs., thence S 40° 03' W 28.64 chs., thence S 75° 16' W 23.94 chs., thence S 20° 27' W 7.30 chs., to a point on the division line between Section 15 and fractional Section 16, T 20 S, R 19 E, thence passing within fractional Section 16, T 20 S, R 19 E S 20° 27' W 2.70 chs., thence S 20° 52' W 6.81 chs., thence S 41° 43' W 21.86 chs., thence N 50° 29' W 22.39 chs., thence N 86° 26' W 13.74 chs., thence N 86° 18' W 14.98 chs., thence N 61° 06' W 19.05 chs., to a point on the division line between fractional Sections 16 and 17, T 20 S, R 19 E, thence passing through said fractional Section 17, T 20 S, R 19 E, N 61° 06' W 6.66 chs., thence S 58° 15' W 18.82 chs., thence S 18° 15' W 21.63 chs., thence S 17° 27' W 2.54 chs., thence S 18° 28' W 6.16 chs., thence S 33° 01' W 7.49 chs. to a point [fol. 244] on the division line between fractional section 17 and Section 20, T 20 S, R 19 E, thence passing within said Section 20 T 20 S, R 19 E, S 33° 01' W 2.07 chs., thence S 32° 59' W 28.40 chs., thence S 72° 28' W 24.82 chs., thence N 52° 58' W 5.47 chs., to a point on the division line between fractional Section 19 and Section 20, T 20 S, R 19 E, thence passing within said fractional Section 19, T 20 S, R 19 E N 52° 58' W 3.35 chs., thence N 52° 59' W 4.87 chs., thence N 52° 58' W 10.88 chs.; thence N 52° 56' W 4.33 chs., thence N. 71° 01' W 47.91 chs., to a point on the division line between Section 18 and fractional Section 19, T 20 S, R 19 E, thence N 89° 56' W 16.02 chs., to the point of beginning being the northwest corner of fractional section 19, T 20 S, R 19 E.

Also, in addition to the lands described above, a tract of land described as follows:

Beginning at the Southeast corner of the SW $\frac{1}{4}$ of SE $\frac{1}{4}$ of fractional Section 29, T 20 S, R 19 E, thence passing within fractional Section 32, T 20 S, R 19 E, south 39.99 chains, thence West 9.67 chains to a point

on the 40-Arpent Line, thence N 33° 30' W 3.88 chs., thence N 35° 00' W 14.00 chs., thence N 35° 00' W 14.00 chs., thence N 35° 00' W 14.00 chs., thence N 39° 39' W 3.06 chs. to the intersection of the division line between fractional Sections 29 and 32, T 20 S, R 19 E, with the 40-Arpent Line, thence along said division line S 89° 59' E 37.86 chs. to the point of beginning.

All of the above described lands contain in the aggregate 8,711 acres, more or less, all in accordance with map or survey of United States Department of Agriculture, Bureau of Biological Survey, dated November 27, 1937, attached hereto.

III.

The aforesaid deed of December 21, 1938, from Thomas Leiter to the United States of America, contained the following stipulations with respect to ownership of the minerals beneath the above described property:

[fol. 245] subject to certain mineral reservations more fully set out in said deed, which is made part hereof by reference; and,

Whereas, on October 28, 1943, by deed recorded in Plaquemines Parish C. O. B. 112, Folio 479, Thomas Leiter conveyed and transferred unto Humble Oil & Refining Company, all of his rights, titles and interest in and to all of the minerals and mineral rights reserved by him in his said deed of December 21, 1938; and

Whereas, on October 15, 1952, said Thomas Leiter authorized S. W. Plauche, Jr., as his Attorney in Louisiana, to secure the retransfer of all said mineral rights which he had conveyed and transferred unto Humble Oil & Refining Company on all of the above described lands, and authorized his said Attorney to effect the retransfer of all such mineral rights to his nominee, The Leiter Minerals, Inc., a Louisiana Corporation which he authorized his said Attorney to organize; and,

Whereas, under such authority, S. W. Plauche, Jr., his said Attorney, has secured the retransfer of such mineral rights from Humble Oil & Refining Company, and effected the transfer thereof to his nominee, The Leiter Minerals, Inc., and his said Attorney has further caused to be ex-

cuted the designated amount of stock in The Leiter Minerals, Inc., a Louisiana Corporation, to his wife, Marion Oates Leiter, and to his daughter, Mary Victoria Leiter, in consideration of the transfer of such mineral rights to The Leiter Minerals, Inc., as his nominee, [fol. 246] Now, therefore:

Thomas Leiter hereby ratifies the actions of said S. W. Planche, Jr., his Attorney, in the premises, and the transfer of all such minerals and mineral rights to his nominee, The Leiter Minerals, Inc., and he confirms, assigns, conveys and delivers all said minerals and mineral rights which he reserved in his aforesaid deed to the United States of America on December 21, 1938, in and to all the above described lands to The Leiter Minerals, Inc., a Louisiana Corporation, and acknowledges receipt of the issuance of said full paid stock as a valuable and valid consideration for all of the rights transferred and delivered to it.

In witness whereof, the said Thomas Leiter has signed and executed this agreement, in triplicate originals, at Aiken, South Carolina, this 26th day of December, 1952, in the presence of the two subscribing witnesses.

(S.) Thomas Leiter, Thomas Leiter.

Witnesses: (S.) Henrietta Falls, (S.) Beatrice Washington.

Affidavit

STATE OF SOUTH CAROLINA,
County of Aiken:

Before me, the undersigned authority, this day personally appeared Henrietta Falls, to me personally known to be the identical person whose name is subscribed to the foregoing instrument as an attesting witness who being first duly sworn, on her oath says: That she subscribed her [fol. 247] name to the foregoing instrument as a witness, and that she knows Thomas Leiter, the Grantor named in said instrument, to be the identical person described therein, and who executed the same and saw him sign the same as his voluntary act and deed, and that she, the said Henrietta Falls subscribed her name to the same at the same time as another attesting witness.

(S.) Henrietta Falls, Witness.

Sworn to and subscribed before me, this 27th day of December, 1952.

(S.) H. A. Ash, Notary Public in and for County of Aiken, State of South Carolina. My commission expires at _____, pleasure of Gov. of S. C.

STATE OF LOUISIANA, PARISH OF PLAQUEMINES, TWENTY-FIFTH JUDICIAL DISTRICT COURT

I, Allen L. Lobrano, Clerk of the Twenty-Fifth Judicial District Court for the Parish of Plaquemines, Louisiana—

Do hereby certify that the above and foregoing is a true and correct copy of the petition filed in The Leiter Minerals, Inc. vs. The California Company, et als., No. 3282 of the records of the Twenty-fifth Judicial District Court for the State of Louisiana and Parish of Plaquemines, with all five exhibits as attached thereto and made part thereof;

I do further certify that the five exhibits attached to the said petition in The Leiter Minerals, Inc. v. The California Company, et als. are true and correct copies of original instruments on file in this office, to-wit:

[fol. 248] (a) Instrument executed by Thomas Leiter in favor of the United States of America dated December 21, 1938, recorded in C. O. B. 92, folio 468 of the records of Plaquemines Parish, Louisiana;

(b) Instrument executed by Thomas Leiter in favor of Humble Oil & Refining Company on October 28, 1943, recorded in C. O. B. 112, folio 479 of the records of Plaquemines Parish, Louisiana;

(c) Instrument executed by Humble Oil & Refining Company in favor of Thomas Leiter on November 18, 1952, recorded in C. O. B. 165, folio 346 of the records of Plaquemines Parish, Louisiana;

(d) Instrument executed by Thomas Leiter acting by and through S. W. Plauche, Jr., in favor of The Leiter Minerals, Inc. on November 24, 1952, recorded in C. O. B. 165, folio 351 of the records of Plaquemines Parish, Louisiana;

(e) Instrument executed by Thomas Leiter in favor

of The Leiter Minerals, Inc. on December 26, 1952, recorded in C. O. B. 165, folio 358 of the records of Plaquemines Parish, Louisiana.

In testimony whereof, I have hereunto set my hand and affixed the seal of this said Court, at Pointe-a-la-Hache, Louisiana, on this 7th day of May, in the year of our Lord, One Thousand Nine Hundred and Fifty-four, and in the One Hundred and Seventy-Eighth year of the Independence of the United States of America.

(S.) Allen L. Lobrano, Clerk.

I, Bruce Nunez, Presiding Judge of the Twenty-Fifth Judicial District Court for the Parish of Plaquemines, do hereby certify that—Allen L. Lobrano—is the Clerk of said Court, that the same is a Court of Record having probate jurisdiction, and that the signature, Allen L. Lobrano, Clerk, to the foregoing certificate is in the proper handwriting of him, the said Allen L. Lobrano, Clerk; to his official act as such, full faith and credit are due and owing; and I do further certify that his attestation is in due form of law.

Given under my hand, at the City of Pointe-a-la-Hache, on the 7th day of May, in the year of our Lord, One Thousand Nine Hundred and Fifty-four.

(S.) Bruce Nunez, Presiding Judge.

[fol. 249] I, Allen L. Lobrano, Clerk of the Twenty-Fifth Judicial District Court for the Parish of Plaquemines, do hereby certify that Bruce Nunez, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, presiding Judge of the Twenty-Fifth Judicial District Court for the Parish of Plaquemines, duly appointed and commissioned and qualified as such, and that said attestation is in due form of law.

Witness my hand and the seal of said Court, this 7th day of May, in the year of our Lord One Thousand nine hundred and fifty-four.

(S.) Allen L. Lobrano, Clerk.

EXCEPTIONS—U. S. 15(b)

25TH JUDICIAL DISTRICT COURT, PARISH OF PLAQUEMINES,
STATE OF LOUISIANA

No. 3282

THE LEITER MINERALS, INC.

v.

THE CALIFORNIA COMPANY, ET AL.

Filed December 23, 1953

EXCEPTIONS (Filed May 21, 1954)

Defendants, The California Company and Allen L. Lobrano, hereby except to plaintiff's petition on the following grounds:

(1) That defendants are occupying the subject lands solely under the authority of mineral leases executed by the United States of America as lessor, and defendants are entitled to have, and desire to have, their said lessor made a party hereto, and to be themselves discharged herefrom, all in accordance with the provisions of Article 43 of the Code of Practice; but said [fol. 250] the United States of America is a sovereign, which has not consented to be sued herein.

(2) Alternatively, and with full reservation of all rights under the preceding exception, that the complaint seeks an adjudication of title adversely to the United States affecting lands held and owned by the United States, and admittedly in the possession of the United States through the defendants as its mineral lessees; as such, it is a suit against the United States, which has not consented to be sued herein.

(3) Alternatively, and with full reservation of all rights under the preceding exceptions, that the United States is a necessary and indispensable party for the following reasons:

(a) Defendants are alleged by the complaint to be in possession as mineral lessees of the United States.

and the plaintiff is attempting to obtain against them an adjudication on the title of the United States, without its presence in Court; and no decree respecting such title could be rendered against defendants alone without also vitally and immediately affecting the rights, interest and property of the United States;

(b) Under Louisiana law, where an issue is presented respecting the expiration or non-expiration of a mineral servitude, the conflicting claimants are indispensable parties to such determination, and the United States is here shown by the complaint to be such a claimant;

[fol. 251] (c) The complaint shows upon its face that plaintiff's cause of action depends upon the construction, validity and effect of the contract entered into between its predecessor, Thomas Leiter, and the United States, under which Thomas Leiter reserved the minerals for a limited time; and that the United States now claims ownership of the land and minerals under said contract. Accordingly, no decree can be entered herein construing or affecting the said contract without both parties to same being present before the Court.

(4) Alternatively, and with full reservation of all rights under the foregoing exceptions, that plaintiff's petition states no right or cause of action against either or both of said defendants.

Wherefore, defendants pray that these exceptions be maintained and that plaintiff's suit be dismissed at its cost; and for all general and equitable relief.

(S.) Milling, Saal, Saunders, Benson & Woodward,
(S.) L. K. Benson, (S.) C. D. Marshall, Attorneys
for Defendants.

Certificate

We hereby certify that the above and foregoing exceptions are filed in good faith and not for purposes of delay.

(S.) C. D. Marshall.

[fol. 252] 25TH JUDICIAL DISTRICT COURT, PARISH OF
PLAQUEMINES, STATE OF LOUISIANA

No. 3282

THE LEITER MINERALS, INC.

versus

THE CALIFORNIA COMPANY, ET AL.

JUDGMENT ON EXCEPTIONS

Filed: March 23rd, 1954

Plaintiff's petition alleges that on December 21, 1938, in the sale of 8711 acres of land to the United States, Thomas Leiter reserved all of the oil, gas and other minerals and mineral rights in and under said lands; that in 1943 these mineral rights were transferred by Leiter to Humble Oil & Refining Co., and in 1952 the Humble Company retransferred all of these mineral rights to Leiter and Leiter deeded all of these minerals and mineral rights on the lands described in the petition to the plaintiff company.

Plaintiff's petition also alleges that defendants operating under purported mineral leases from the United States are in possession of these minerals and mineral rights and have been producing oil and other minerals in large quantities from the lands described in its petition.

Plaintiff alleges that the minerals and mineral rights reserved in the Leiter sale to the United States in 1938 are imprescriptible by virtue of Louisiana Act 315 of 1940 (R. S. 9:5806), and that plaintiff now owns all of the oil, gas and other mineral rights in and under said lands.

[fol. 253] Petitioner alleges that the United States bought the lands in question subject to the mineral reservation for the sole purpose of establishing a wild life refuge.

Petitioner asked for an accounting from defendants of the total oil, gas and other minerals taken by them from the lands described in the petition and for money judgment for the value of the minerals taken by defendants without right, and ask that defendants be decreed to have been possessors in bad faith of the property involved in this suit.

Defendants excepted on various grounds:

1. That their lessor, the United States, should be made party to this suit, in accordance with La. C. P. 43; but that the United States is a sovereign which has not consented to be sued herein.

2. That the petition seeks adjudication of title adversely to the United States, and therefore this is a suit against the United States, which has not consented to be sued herein.

3. That the United States is a necessary and indispensable party to this suit which involves its title; whether a mineral servitude had expired; that plaintiff's cause of action depends upon construction of a contract with the United States and any judgment in this case would affect the contract without both parties being before the court, and finally, that plaintiff's petition states no right or cause of action against either or both defendants.

Under authority of *State ex rel. Brenner v. Noe*, 186 La. [fol. 254] 102, 171 So. 708, *Richardson v. Liberty Oil Co.*, 143 La., 130, 78 So. 326 *Dreux v. Kennedy*, 12 Rob. 489, *United States v. Lee*, 106 U. S. 196, 27 L. Ed. 171, and *Tindal v. Wesley*, 167 U. S. 204, 42 L. Ed. 137, this Court is of the opinion that under La. C. P. 43, plaintiff may proceed against the defendants alleged to be in possession of the minerals and mineral rights in question as lessees of the United States, because in this case the lessor is the United States, against whom no direct action can be brought. Further, such a suit against individuals to recover possession of real property such as the minerals involved in this case is not a suit against the United States.

Defendants memorandum argues that the minerals reservation in the sale by Leiter to the United States was to terminate on April 1, 1945; that Louisiana Act 315 of 1940 (R. S. 9:5806) only applies to questions of prescription and as Leiter's reservation was expressly limited and restricted to expire April 1, 1945 by the contract which created it, it expired before any question of prescription could arise.

They urge that Act 315 of 1940 is concerned solely with the prescription of ten (10) years for non-user, but has

nothing to do with a contractual limitation of a servitude to a shorter period of time.

The mineral reservation in the Leiter sale to the United States is as follows:

"The Vendor reserves from this sale the right to mine and remove, or to grant to others the right to mine and remove, all oil, gas and other valuable minerals which may be deposited in or under said lands, and to remove any oil, gas or other valuable minerals [fol. 255] from the premises; the right to enter upon said lands at any time for the purpose of mining and removing said oil, gas and minerals, said right, subject to the conditions hereinafter set forth, to expire April 1, 1945, it being understood, however, that the vendor will pay to the United States of America, 5% of the gross proceeds received by them as royalties or otherwise from all oil or minerals so removed from in or under the aforescribed lands, until such time as the vendors shall have paid to the United States of America, the sum of \$25,000, being the purchase price paid by said United States of America for the aforescribed properties.

"Provided, that if at the termination of the ten (10) year period of reservation, it is found that such minerals, oil and gas are being operated and have been operated for an average of at least 50 days per year during the preceding three (3) year period to commercial advantage, then, and in that event, the said right to mine shall be extended for a further period of five (5) years, but that the right so extended shall be limited to an area of twenty-five acres of land around each well or mine producing, and each well or mine being drilled or developed at time of first extension, to-wit: April 1, 1945.

"Provided, that this said right to mine as previously stated shall be further extended from time to time for periods of five (5) years whenever operation during the preceding five (5) year period has been for an average of 50 days per year during this period, and

"Provided that at the termination of the ten (10) year period of reservation, if not extended, or at the

termination of any extended period in case the operation has not been carried on for the number of days stated, the right to mine shall terminate, and complete fee in the land become vested in the United States.

"The reservation of the oil and mineral rights herein made for the original period of ten (10) years and for any extended period or periods in accordance with the above provisions shall not be affected by any subsequent conveyance of all or any of the aforementioned properties by the United States of America, but said mineral rights shall, subject to the conditions above set forth, remain vested in the vendors."

It will be noted that, first, Vendor reserved from the sale the right to mine and remove, or to grant to others the right to mine and remove, all valuable minerals from said lands. This reservation was not for any stated period, [fol. 256] but it is evident that Vendor meant and purchaser understood this mineral reservation was for the full ten year period allowed by Louisiana law, because in the second and fourth paragraphs of this reservation it is interpreted and stated to be "then ten (10) year period of reservation", and in the fifth paragraph of this reservation it is further interpreted and stated as "the reservation of the oil and mineral rights herein made for the original period of ten (10) years * * *".

Obviously Leiter reserved all minerals in the property sold to the United States for the full period of ten (10) years permitted by Louisiana law in 1938. In 1940, by Act No. 315, the Louisiana Legislature made mineral rights so reserved in a sale of land to the United States imprescriptible.

It must be noted in the first paragraph that after the clause making the general mineral reservation there is a semi-colon (;), after which a statement is made that "the right to enter upon said lands" at any time for the purpose of mining and removing oil, or other minerals to expire April 1, 1945. This agreement as to right of entry at any time upon said lands must be distinguished from a mineral reservation. A mineral reservation is a withholding in the vendor of his property or title in whatever oil, gas or other valuable minerals which may be deposited in or

under the lands. A right of entry upon land is an entirely [fol. 257] different matter.

Defendants' memorandum on exceptions (p. 15) states that "Louisiana Act 315 of 1940 (Now R. S. 9:5806) is concerned solely with the prescription of ten years for non-user." Undoubtedly that is the case here.

The Court finds that plaintiff's petition discloses both a legal right of action and a cause of action. Therefore,

It is ordered, adjudged and decreed that the exceptions herein filed by defendants are not well founded in law, and that all said exceptions be overruled.

Judgment read, rendered and signed in open Court at Pointe-a-la-Hache, Louisiana, this 23rd day of March, 1954.

(S.) Bruce Nunez, Judge.

A true copy. (S.) Pauline C. Hebert, Dy. Clerk of Court, Ex-Officio Recorder, etc.

STATE OF LOUISIANA, PARISH OF PLAQUEMINES, TWENTY-FIFTH JUDICIAL DISTRICT COURT

I, Allen L. Lobrano, Clerk of the Twenty-Fifth Judicial District Court for the Parish of Plaquemines, Louisiana.

Do hereby certify that the above and foregoing are true and correct copies of exceptions filed in the case of The Leiter Minerals, Inc. v. The California Company, et als, No. 3282 of the records of the Twenty-Fifth Judicial District Court for the State of Louisiana and the Parish of [fol. 258] Plaquemines, and of the opinion and judgment of Court overruling said exceptions:

In testimony whereof, I have hereunto set my hand and affixed the seal of this said Court, at Pointe-a-la-Hache, Louisiana on this 7th day of May, in the year of our Lord, One Thousand Nine Hundred and Fifty-Four, and in the one hundred and seventy-eighth year of the Independence of the United States of America.

(S.) Allen L. Lobrano, Clerk.

I, Bruce Nunez, Presiding Judge of the Twenty-Fifth Judicial District Court for the Parish of Plaquemines, do hereby certify that—Allen L. Lobrano—is the Clerk of said

Court, that the same is a Court of Record having probate jurisdiction, and that the signature, Allen L. Lobrano, Clerk, to the foregoing certificate is in the proper handwriting of him, the said Allen L. Lobrano, Clerk; to his official act as such, full faith and credit are due and owing; and I do further certify that his attestation is in due form of law.

Given under my hand, at the City of Pointe-a-la-Hache, on the 7th day of May, in the year of our Lord One Thousand Nine Hundred and Fifty-Four.

(S.) Bruce Nunez, Presiding Judge.

[fol. 259] I, Allen L. Lobrano, Clerk of the Twenty-Fifth Judicial District Court for the Parish of Plaquemines, do hereby certify that Bruce Nunez, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, presiding Judge of the Twenty-Fifth Judicial District Court for the Parish of Plaquemines, duly appointed and commissioned and qualified as such, and that said attestation is in due form of law.

Witness my hand and the seal of said Court, this 7th day of May, in the year of our Lord One Thousand Nine Hundred and Fifty-Four.

(S.) Allen L. Lobrano, Clerk.

STATE OF LOUISIANA, PARISH OF PLAQUEMINES,
TWENTY-FIFTH JUDICIAL DISTRICT COURT

I, Allen L. Lobrano, Clerk of the Twenty-Fifth Judicial District Court for the Parish of Plaquemines, Louisiana—

Do hereby certify, that the attached Extract from minutes of Court of Tuesday, March 23, 1954, is a true and correct certified Extract from the minutes of the 25th Judicial District Court for the Parish of Plaquemines, Louisiana.

In testimony whereof, I have hereunto set my hand and affixed the seal of this said Court, at Pointe-a-la Hache [fol. 260] Louisiana on this 18th day of May, in the year of our Lord, One Thousand Nine Hundred and Fifty-Four,

and in the One Hundred and Seventy-Eighth year of the Independence of the United States of America.

(S.) Allen L. Lobrano, Clerk.

I, Bruce Nunez, Presiding Judge of the Twenty-Fifth Judicial District Court for the Parish of Plaquemines, do hereby certify that Allen L. Lobrano is the Clerk of said Court, that the same is a Court of Record having probate jurisdiction, and that the signature, Allen L. Lobrano, Clerk, to the foregoing certificate is in the proper handwriting of him, the said Allen L. Lobrano, Clerk; to his official act as such, full faith and credit are due and owing; and I do further certify that his attestation is in due form of law.

Given under my hand, at the City of Pointe-a-la-Hache, on the 18th day of May, in the year of our Lord One Thousand Nine Hundred and Fifty-Four.

(S.) Bruce Nunez, Presiding Judge.

I, Allen L. Lobrano, Clerk of the Twenty-Fifth Judicial District Court for the Parish of Plaquemines, do hereby certify that Bruce Nunez, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, presiding Judge of the Twenty-Fifth Judicial District Court for the Parish of Plaquemines, duly appointed and commissioned and qualified as such, and that [fol. 261] said attestation is in due form of law.

Witness my hand and the seal of said Court, this 18th day of May, in the year of our Lord One Thousand Nine Hundred and Fifty-Four.

(S.) Allen L. Lobrano, Clerk.

EXTRACT FROM MINUTES OF COURT—TUESDAY, MARCH 23RD,
1954

Pursuant to Adjournment The Court Met:

Present: Hon. Bruce Nunez, Judge; Hon. Rudolph M. McBride, First Assistant District Attorney.

No. 3282

THE LEITER MINERALS, INC.

VS.

THE CALIFORNIA CO. ET AL.

- The Court rendered judgment this day as follows:

It is ordered, adjudged and decreed that the exceptions herein filed by defendants are not well founded in law, and that all said exceptions be overruled.

And the Court was ordered adjourned.

[fol. 262] IN THE UNITED STATES DISTRICT COURT

OPINION OF THE COURT—Filed June 22, 1954

George R. Blue, United States Attorney, M. Hepburn Many, Assistant United States Attorney, Attorneys for Plaintiff.

S. W. Plauche, Jr., Attorney for The Leiter Minerals, Inc. Milling, Saal, Saunders, Benson & Woodward, Charles D. Marshall, Attorneys for the California Company. Wright, District Judge.

This matter is before the court on motion of the United States for a preliminary injunction against the defendant, Leiter Minerals, Inc., restraining it, pending further proceedings herein, from prosecuting a title suit in the Twenty-Fifth Judicial District Court for the Parish of Plaquemines, Louisiana, against certain mineral lessees of the United States. In that suit Leiter Minerals is claiming ownership of the mineral rights beneath land sold by its predecessor in title to the United States.

On December 21, 1938, the United States acquired from Thomas Leiter a tract of land comprising more than 8,000 acres in Plaquemines Parish, Louisiana. The deed reserved the mineral rights in the land to the vendor with the stipulation that, with certain exceptions not pertinent here, these rights would expire on April 1, 1945. The defendant, Leiter Minerals, Inc., is a Louisiana corporation which [fol. 263] claims to have succeeded Thomas Leiter in title to the reserved mineral interest in the land in suit. Neither Thomas Leiter, Leiter Minerals, Inc., nor any other person acting through or under them has ever conducted any mineral operations of any kind pursuant to the reservation of the mineral rights in the deed to the United States.

On March 1, 1949, the United States executed four oil, gas, and mineral leases covering different portions of the property to Frank J. and Allen L. Lobrano who have conveyed operating rights under the leases to the California Company, a California corporation, which has drilled and completed eighty producing wells on the property. The United States has heretofore received royalty therefrom in excess of \$3,500,000.00. Any interruption in the operation of these wells would, in the event the United States is successful in these proceedings, cause it irreparable damage. Since the date of its acquisition, the United States has also maintained and administered the lands acquired from Thomas Leiter as part of a wild life refuge, thus retaining physical possession of the surface of the land as well as physical possession of the mineral rights by virtue of the mineral operations conducted by its lessees.

The Leiter Minerals, Inc. has filed and is currently prosecuting an action in the Twenty-Fifth Judicial District Court for the State of Louisiana, Parish of Plaquemines, against the California Company and Allen L. Lobrano in their capacity of lessees under the mineral leases executed by the United States, praying that it, Leiter Minerals [fol. 264] be recognized as "the fee simple, true and lawful owner of all of the oil, gas and minerals, and oil, gas and mineral rights in, on and under the land" acquired by the United States by deed from Thomas Leiter. The United States is not a party to the action before the state court.

The United States has instituted the present litigation

before this court against Leiter Minerals, Inc., praying that its title and rights to the minerals beneath the property be quieted, that the various clouds upon the title of the United States in the form of mineral leases executed by the defendant be cancelled, and that an injunction be issued restraining the Leiter Minerals from further asserting or claiming any interest in the said minerals or mineral rights, as well as from the further prosecuting the suit filed by it in the Twenty-Fifth Judicial District Court for the Parish of Plaquemines against the mineral lessees of the United States. The United States also asks for a temporary injunction restraining the prosecution of the action in the Twenty-Fifth Judicial District Court, pending a final determination of the issues here in suit. This opinion covers only the application for a temporary injunction.

The United States contends that the suit brought by Leiter Minerals in the Twenty-Fifth Judicial Court of the Parish of Plaquemines against its lessees is a suit against the sovereign which has not consented to be sued, that, in the present posture of the case, this court has exclusive jurisdiction to determine the ownership of the minerals and [fol. 265] mineral rights in question and, therefore, an injunction should be issued by this court staying the state court proceeding against its mineral lessees. The defendant, Leiter Minerals, contends that its action before the Twenty-Fifth Judicial District Court, since it seeks to determine ownership of mineral rights, is in rem or quasi in rem, and, since the state court by virtue of that suit has acquired jurisdiction over the res, it alone has the right to determine the ownership of the minerals and mineral rights in question. Accordingly, it has filed herein a motion to dismiss or stay these proceedings pending the outcome of the proceedings in the state court.

At the outset it may be well to examine the jurisdiction of this court as to this proceeding. It is properly brought, by the United States as plaintiff, under 28 U. S. C. 1345. It seeks equitable relief in the form of an action to quiet title and to remove clouds on the title of the United States. A federal court has jurisdiction to grant such relief. *Mississippi Mills v. Cohn*, 150 U. S. 202; *Ridings v. Johnson*, 128 U. S. 212; *Humble Oil & Refining Co. v. Sun Oil Co.*, 191 F. 2d 705 (CA 5); *Stricker Land & Timber Co. v.*

Hogue, 61 F. Supp. 825; *Manhattan Land & Fruit Co. v. Buras*, 43 F. Supp. 361. The application for an injunction against the state proceeding, however, presents a more difficult problem. 28 U. S. C. 2283 provides that a federal court may not grant an injunction to stay proceedings in a state court except as expressly authorized by an act of Congress, or, where necessary, in aid of its jurisdiction. Even where a federal court may enjoin a state court proceeding, such equitable relief should be granted only when the federal court, "in its sound discretion exercised with the 'scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts'" is convinced that "the asserted federal right cannot be preserved except by granting the 'extraordinary relief of an injunction in the federal courts.'"² Considering that "few public interests have a higher claim upon the discretion of a chancellor than the avoidance of needless friction with state policies,"³ the usual rule of comity must govern the exercise of equitable jurisdiction in this case."⁴ Undoubtedly, one of the highest duties of a federal court sitting in equity is to avoid unseemly conflict of authority between state and federal courts. It is with these principles in mind that this court undertakes a consideration of the application for an injunction against the proceedings in the state court. [fol. 267] In *Beers v. Arkansas*, 20 How. 527, 529, Mr. Chief Justice Taney said, "It is an established principle of jurisprudence in all civilized nations that the sovereign cannot be sued in its own courts, or in any other, without its consent and permission; but it may, if it thinks proper, waive this privilege and permit itself to be made a defendant in a suit by individuals, or by another state." This permission can be granted only by the Congress itself.

¹ *Matthews v. Rodgers*, 284 U. S. 521, 525.

² *Railroad Commission of Texas v. Rowan & Nichols Oil Co.*, 311 U. S. 614, 615.

³ *Railroad Commission of Texas v. Pullman Co.*, 312 U. S. 496, 500.

⁴ *Alabama Public Service Commission v. Southern Railway Co.*, 341 U. S. 341, 349.

United States v. Shaw, 309 U. S. 495; *United States v. U. S. Fidelity Co.*, 309 U. S. 506; *Minnesota v. United States*, 305 U. S. 382; No officer of the United States has power to confer on any court jurisdiction of a suit against the United States and, even where the United States has intervened in a litigation pending before any court, no affirmative judgment can be rendered against the United States. *Stanley v. Schwalby*, 162 U. S. 255, 270; *Carr v. United States*, 98 U. S. 433, 438; *United States v. Shaw*, supra; *United States v. U. S. Fidelity Co.*, supra. In other words, by intervening in an action the United States does not, and cannot, waive its right not to be sued without its consent for the reason that only Congress itself can give that consent.

Officers or agents of the United States may be sued, however, for possession of property held by them in behalf of the United States. *Land v. Dollar*, 330 U. S. 731; *United States v. Lee*, 106 U. S. 196. Such an action is not one against the United States and, of course, would not be res judicata as against the United States. *United States v. Lee*, supra; *Land v. Dollar*, supra. Where a suit is brought in a state or federal court against officers or [fol. 268] agents of the United States claiming property held by those officers for the United States, the United States may bring its own action in a state or federal court asking the court to adjudicate its ~~claim~~ to title to the property involved in the former suit and is entitled to an injunction staying further proceedings therein. *United States v. Lee*, supra; *Land v. Dollar*, supra; *Land v. Dollar*, 341 U. S. 737; *United States v. Dollar*, 196 F. 2d 551 (CA 9), 193 F. 2d 114 (CA 9), 190 F. 2d 547 (CA 9), 100 F. Supp. 881 (D. C. Calif.), 97 F. Supp. 50 (D. C. Calif.); *Brown v. Wright*, 137 F. 2d 484 (CA 4); *United States v. McIntosh*, 57 F. 2d 573 (D. C. Va.); *United States v. Babcock*, 6 F. 2d 160 (D. C. Ind.); *United States v. Inaba*, 291 Fed. 416 (D. C. Wash.); *United States v. Taylor's Oak Ridge Corp.*, 89 F. Supp. 28 (D. C. Tenn.); *United States v. Cain*, 72 F. Supp. 897 (D. C. Mich.)

The landmark case in which the right to sue a sovereign without its consent is fully considered both in the prevailing opinion as well as in the dissent is *United States v. Lee*, supra. The defendants in that case were military officers

who, acting under orders of the President, took possession of certain land and converted one part into a fort and another into a cemetery. Plaintiff brought the action to eject these officers and to recover possession of the land. The trial court held that the claim of the plaintiff to the land was valid and that the defendants were wrongfully in possession. The Supreme Court affirmed the judgment, holding that the assertion by officers of the government of [fol. 269] their authority to act did not foreclose judicial inquiry into the lawfulness of their action. It further held that the judgment was not *res judicata* against the United States because it was not, and could not, be made a party to the suit. The court, in answering the contention that the United States would be prejudiced by a judgment against its officers, said:

"Another consideration is, that since the United States cannot be made a defendant to a suit concerning its property, and no judgment in any suit against an individual who has possession or control of such property can bind or conclude the government, as is decided by this court in the case of *Carr v. United States*, already referred to, the government is always at liberty, notwithstanding any such judgment, to avail itself of all the remedies which the law allows to every person, natural or artificial, for the vindication and assertion of its rights. Hence, taking the present case as an illustration, the United States may proceed by a bill in chancery to quiet its title, in aid of which, if a proper case is made, a writ of injunction may be obtained."

The suggestion made by the court in *Lee*, that the United States initiate proceedings of its own to quiet its title and to obtain an injunction restraining suits brought against its officers for possession of land held by them for the United States, was used by the United States in the now famous Dollar litigation. In that litigation the Supreme Court held that a suit against individual members of the United States Maritime Commission, asking for possession of certain shares of stock pledged to the United States, was not a suit against the United States. *Land v.*

Dollar, 330 U. S. 731. Thereafter, the Court of Appeals for the District of Columbia held on the merits that the Dollars were entitled to possession of the shares. *Dollar* [fol. 270] v. *Land*, 184 F. 2d 245 (CA. D. C.). Subsequently, the United States filed an action to quiet its title to the shares of stock in the District Court for the Northern District of California and asked for a temporary injunction against the Dollars, restraining them from exercising any rights obtained under the judgment of the courts in the District of Columbia. That Court granted a temporary injunction to maintain the status quo, pending a determination of the title claim of the United States. *United States v. Dollar*, 97 F. Supp. 50 (D. C. Calif.) The Court of Appeals for the Ninth Circuit declined to dissolve the temporary injunction, 190 F. 2d 547, and in fact, when the District Court decided the case against the United States on the merits of the title, granted a new injunction of its own to preserve the status quo of the District of Columbia proceeding, pending appeal. 193 F. 2d 114. Thereafter, the Court of Appeals for the Ninth Circuit reversed the District Court, holding that the United States was not estopped by the possession litigation in the District of Columbia against its agents and was entitled to its own day in court. 196 F. 2d 551.

In the meantime, various officers of the United States had been cited for contempt of the Court of Appeals for the District of Columbia for bringing the action in the name of the United States to quiet title and for the injunction in the United States District Court for the Northern District of California. *Land v. Dollar*, 190 F. 2d 623 (CA. D. C.). Upon application to the Supreme Court, the contempt orders were stayed and the Supreme Court recognized in its per curiam that the United States was at that time before the District Court for the Northern District of California litigating its claim of title to the same shares of stock as those involved in the contempt cases which, of course, it had a right to do since it was not a party to the possession proceedings in the District of Columbia.

In the case at bar, in the state court litigation sought to be enjoined here, Leiter Minerals is demanding not only possession of property claimed by the United States,

but title as well. Obviously, under the authority of the *United States v. Lee*, supra, and *Land v. Dollar*, supra, since the United States is not and cannot be made a party to that litigation, the title of the United States to the property cannot be adjudicated therein. Under the same authorities the state court would have the right to determine possession of the property, the judgment therein in no event to be res judicata as to the United States. However, acting on the authority of the *United States v. Lee*, *Land v. Dollar*, and the other cases cited herein, the United States has decided to come into this court under 28 U. S. C. 1345 and ask that its title claim to the property in question be adjudicated; and that pending adjudication the proceedings brought in the state court against its mineral lessees be enjoined. Not only has the United States a right to proceed thusly, but an injunction should be issued to protect the jurisdiction of this court, pending determination of the ownership of the property in suit.

[fol. 272] All the parties necessary to make this determination are before this court. The United States, an indispensable party insofar as the state proceedings seek to adjudicate title to the property, is not before the state court. Consequently, since the state court action cannot settle this contest for ownership of these mineral rights between Leiter Minerals and the United States, further proceedings therein can only impinge on the jurisdiction of this court and confuse the real issues in suit. Moreover, if the state court suit is allowed to proceed to final judgment, the rights of the United States to the property in question will actually be determined "behind its back"⁵ for the reason that, since ownership of these mineral rights will turn on an interpretation of a state statute,⁶ this court and the appellate federal courts may be required, under *Erie Railroad Co. v. Tompkins*, 304 U. S. 64, to follow that judgment in spite of the fact that the United States is not a party to those proceedings. Furthermore, should the state court proceeding come to final judgment dispossessing the mineral lessees of the United States be-

⁵ *Goldberg v. Daniels*, 231 U. S. 218, 222.

⁶ La. R. S. 9:5806.

fore the litigation in the federal courts is terminated, inestimable and irreparable damage will result to the United States from the interruption in the operations of its lessees on the premises, in the event the United States is ultimately declared the owner of the property in suit. This contingency can be avoided only by an abatement of the state court action.

[fol. 273] The defendant, Leiter Minerals, relies most heavily on *United States v. Bank of New York Co.*, 296 U. S. 463. In that case the Supreme Court held that the federal court did not have exclusive jurisdiction of the claim of the United States to certain funds of three Russian insurance companies dissolved by the Soviet government in 1918, which funds were in the custody of the state court in New York in connection with proceedings in that court liquidating the insurance companies. The funds were being held subject to appropriate orders of the court providing for their distribution to creditors, policyholders, and other claimants, in accordance with the state insurance laws. The Soviet government claimed ownership of these funds and assigned its claim to the United States, which filed suit in 1933, eight years after the State liquidation proceedings began, in the United States District Court for the Southern District of New York, and sought to enjoin further proceedings concerning the funds in the state court. The judgment of the federal district court, dismissing the complaint and denying a motion for injunction, was affirmed by the Supreme Court on the ground that the state court had first assumed jurisdiction and control of the funds, and that such control was essential to give effect to that court's jurisdiction to protect the rights of claimants in the state court proceeding, none of whom was before the federal court.

The significant points of difference between the Bank of New York case and the present action are many and obvious. In the first place, there the funds or res were in [fo. 274] possession of the state court. The Supreme Court has held on many occasions that in cases involving insurance liquidation proceedings, the marshaling of assets, administration of trusts and estates, and assignments for the benefit of creditors, the court which first obtains possession of the res or funds, has the exclusive right to

determine the disposition of claims against those funds.⁷ There is no case, however, from the Supreme Court which holds that the mere filing of a suit claiming ownership of property places that property under the control of the court so that no other court has the right to adjudicate claims against that property. In fact, the decisions seem to be to the contrary. *Markham v. Allen*, 326 U. S. 490; *Mandeville v. Canterbury*, 318 U. S. 47; *Commonwealth Trust Co. v. Bradford*, 297 U. S. 613.

A second point of difference between *United States v. Bank of New York Co.* and the case at bar is that in *Bank of New York*, all the claimants to the insurance fund, possibly hundreds, were before the state court and not before the federal court, whereas here the converse is true. All the claimants to the mineral rights in suit are before this court, and the United States, the party in whose name the record title to the property in question is, not only is not before the state court but cannot be. Nor can the [fol. 275] United States intervene in that proceeding, as suggested in *Bank of New York*,⁸ for the reason that to

⁷ *United States v. Bank of New York*, supra; *Penn General Casualty Co. v. Commonwealth of Pennsylvania*, 294 U. S. 189; *Riehle v. Margolis*, 279 U. S. 218; *Harkin v. Brundage*, 276 U. S. 36; *Lion Bonding & Surety Company v. Karatz*, 262 U. S. 77; *Palmer v. Texas*, 212 U. S. 118; *Farmers' Loan & Trust Company v. Lake Street Elevated Railroad Co.*, 177 U. S. 51.

⁸ In *United States v. Bank of New York Co.*, supra, the court, at page 480, said:

"There is no merit in the suggestion that the United States in presenting its claim in the state proceedings would be compelled to take the position of a defendant, —being sued without its consent. In intervening for the presentation of its claim, the United States would be an actor—voluntarily asse-ting what it deemed to be its rights—and not a defendant. We cannot see that there would be impairment of any rights the United States may possess, or any sacrifice of its proper dignity as a sovereign, if it prosecuted its claim in the appropriate forum where the funds are held."

intervene therein would be to make the United States a defendant along with its mineral lessees,⁹ and, of course, the United States cannot be a defendant in any case without the consent of Congress. *Minnesota v. United States*, supra; *United States v. Shaw*, supra; *United States v. U. S. Fidelity Co.*, supra.

The defendant is in a poor position to urge on a court of equity that it should be allowed to continue its suit in the state court which, as has been shown, is in effect a

⁹ Leiter Minerals, in its state court complaint, charges:

"On information and belief, petitioner alleges that defendant, Allen L. Lobrano, purported to secure an oil, gas and mineral lease or leases from the United States of America on or about March 1, 1949; and further, on information and belief, petitioner avers that the said defendant, Allen L. Lobrano subleased or assigned the said mineral lease or leases thus acquired by him to defendant, the California Company, but retained or otherwise secured an interest in the nature of a mineral royalty interest in the oil, gas and minerals owned by petitioner and sued for herein.

"Petitioner further alleges that the lands sold and transferred by the said Thomas Leiter to the United States of America were acquired by the United States by the said deed as prepared by it and dated December 21, 1938, for the sole purpose of establishing a game or wild life refuge; and the consideration paid by the United States did not cover the value of any mineral rights on said lands.

"Petitioner desires, and is entitled to, an accounting from defendants of the total amount of oil, gas or other hydrocarbons or other minerals taken or produced by defendants from the property described in paragraph 2; and petitioner is further entitled to a money judgment against the said defendants for the amount and value of the said minerals so taken by defendants without right or legal authority. Defendants, under the law, are and have been possessors in bad faith of the property involved in this suit."

suit against the United States. When Thomas Leiter deeded this property in Plaquemines Parish to the United States for valuable consideration, he was bound to know that if any controversy arose between him and the United States involving that deed, he could not sue the United [fol. 276] States without its consent except for a money judgment in the Court of Claims under the Tucker Act.¹⁰ He was bound to know that he was dealing with a sovereign which, under the law, can choose the court in which to litigate with private citizens. Knowing these facts, neither he nor his successor in title should ask a court of equity to protect them while they sue the United States "behind its back" in a state court where it cannot be made a party.

Judgment accordingly.

New Orleans, Louisiana, June 22, 1954.

(S.) J. Skelly Wright, United States District Judge.

[fol. 277] IN UNITED STATES DISTRICT COURT

ORDER DENYING MOTION OF DEFENDANT THE LEITER MINERALS, INC. TO DISMISS, ETC.—Filed June 24, 1954

This cause having come on for hearing on the 21st day of May, 1954, on application of plaintiff for a temporary injunction herein against the defendant The Leiter Minerals, Inc., and on motion of defendant The Leiter Minerals, Inc. to dismiss plaintiff's complaint, or alternatively to stay any and all further proceedings;

And the Court having on the 22nd day of June, 1954, filed its written opinion holding that for the reasons therein stated plaintiff is entitled to the relief prayed for:

It is ordered that the motion of defendant The Leiter Minerals, Inc. to dismiss complaint of plaintiff be, and the same is hereby denied.

It is further ordered that the alternative motion of defendant The Leiter Minerals, Inc. to stay any and all further proceedings in this action pending the determination of that certain action filed by the said The Leiter Minerals,

¹⁰ 28 U. S. C. 1491.

Inc. in the Twenty-fifth Judicial District Court for the Parish of Plaquemines, State of Louisiana, entitled "The Leiter Minerals, Inc. v. The California Company, et al." No. 3282 of the records of said Court be, and the same is hereby denied.

It is further ordered that a temporary injunction be and it hereby is granted unto plaintiff the United States of America, against the defendant, The Leiter Minerals, Inc. [fol. 278] its agents, servants, employees and attorneys, and all persons in active concert or participation with them, restraining them, pending the determination of this action or until the further order of this Court, from prosecuting or attempting to prosecute that certain action filed by said The Leiter Minerals, Inc. in the Twenty-fifth Judicial District Court for the Parish of Plaquemines, State of Louisiana, entitled "The Leiter Minerals, Inc. v. The California Company, et al.", No. 3282 of the records of said Court.

New Orleans, Louisiana, June 24th, 1954.

(S.) J. Skelly Wright, United States District Judge.

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed July 19, 1954

Notice is hereby given that The Leiter Minerals, Inc. defendant in the above captioned action, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the order or judgment signed herein June 24th, 1954, and entered June 25th, 1954.

Lake Charles, Louisiana, July 14th, 1954.

(S.) S. W. Plauche, Jr., S. W. Plauche, Jr., Attorney for Appellant, The Leiter Minerals, Inc., 303 Pioneer Building, Lake Charles, Louisiana.

[fol. 279] Cost Bond on Appeal for \$250.00 filed July 19, 1954 omitted in printing.

[fol. 280] IN UNITED STATES DISTRICT COURT

DESIGNATION OF CONTENTS—Filed July 19, 1954

The Leiter Minerals, Inc., the appellant, hereby designates the entire record, proceedings and evidence in this cause to be contained in the record on appeal.

Lake Charles, Louisiana, July 16th, 1954

(S.) S. W. Plauche, Jr., S. W. Plauche, Jr., Attorney for The Leiter Minerals, Inc.

CERTIFICATE OF SERVICE (omitted in printing)

[fol. 281] IN UNITED STATES DISTRICT COURT

MOTION TO STAY PROCEEDINGS PENDING APPEAL—Filed July 19, 1954

Now comes The Leiter Minerals, Inc., and with respect moves the Court, as follows, and says that:

1

Mover, contemporaneously with the filing of this motion, has filed and perfected an appeal to the Court of Appeals, Fifth Circuit, from the judgment or order signed by this Honorable Court June 24th, 1954, and entered herein June 25th, 1954. Mover is entitled to such an appeal under the law, and especially Title 28 USCA, Section 1292.

2

Although the appeal of mover is an interlocutory appeal taken from this Court's said order entered June 25th, 1954, granting a preliminary or temporary injunction, the Court of Appeals is not limited solely to that portion of the order or judgment granting the injunction, but the jurisdiction of the Court of Appeals embraces all other parts of the said order or judgment that are basic to and underlie the said injunctive order, including those portions of

the judgment or order denying mover's motion to dismiss or abate the plaintiff's complaint, and mover's alternative motion to stay any and all further proceedings in this action pending the determination of the State Court suit bearing No. 3282 on the docket of the Twenty-fifth Judicial District Court for the Parish of Plaquemines, Louisiana.

[fol. 282]

3

Therefore, in view of the appeal which is contemporaneously being taken and perfected by mover, this Court is without further jurisdiction or power to proceed further in this cause until this case has been decided on the said appeal taken by mover herein.

4

Counsel for the plaintiff herein have advised mover's undersigned counsel that it is the position of the plaintiff herein that it is entitled and desires to proceed further in this cause in this Honorable Court, irrespective of the said appeal now being taken by mover, notwithstanding the fact that upon this appeal being taken and perfected this Court is without jurisdiction and power further to proceed herein.

5

In any event, and alternatively, this Court is entitled to, and should, stay all further proceedings herein until the issues presented by mover's said appeal have been decided by the Court of Appeals. Since the temporary injunction granted by this Court in favor of the plaintiff will not be suspended or affected by the taking of this appeal, neither plaintiff nor any of the other litigants in this cause will be prejudiced in any way. On the contrary, if this Court should proceed further in the present cause pending the said appeal of mover, unnecessary expense and hardship will result not only to mover, but to all other litigants, in [fol. 283] the event the Court of Appeals should reverse this Court's said order or judgment entered on June 25th, 1954.

Wherefore, mover prays that this Court order that it has no further jurisdiction or power to proceed herein

pending the said appeal being contemporaneously taken by mover herein, and that no further proceedings can, or should, be taken by any of the litigants in this cause in this Court pending said appeal; and, alternatively, mover prays that this Court, in its discretion, order that all further proceedings herein be stayed pending the determination of the issues presented in the said appeal by mover.

By mover's attorneys, Plauche and Plauche, By (S.)
S. W. Plauche, Jr., S. W. Plauche, Jr., 303 Pioneer Building, Lake Charles, Louisiana.

CERTIFICATE OF SERVICE (omitted in printing)

.

[fol. 284] IN UNITED STATES DISTRICT COURT

ANSWER TO DEFENDANT'S MOTION STAYING PROCEEDINGS
PENDING APPEAL—Filed August 16, 1954

.

Now comes the United States of America, and in answer to the motion of Leiter Minerals, Inc. for an order that this Court has no further jurisdiction to proceed pending mover's appeal, and, alternatively, for an order staying further proceedings herein pending said appeal, with respect represents:

I

Respondent admits the allegations of Paragraph I of the motion.

II

Respondent admits that the appeal of mover is an interlocutory appeal taken from this Court's order entered June 25, 1954, granting a preliminary or temporary injunction; but respondent denies that the jurisdiction of the Court of Appeals embraces parts of the said order or

judgment other than the portion of the order or judgment granting the injunction.

III

Respondent denies the allegations of Paragraph III of the motion.

IV

Respondent admits the allegations of Paragraph IV of the motion except that respondent denies that this Court is without jurisdiction and power further to proceed herein.

[fol. 285]

V

Respondent denies the allegations of Paragraph V of the motion.

Wherefore the United States of America prays that the motion of Leiter Minerals, Inc. for an order that this Court has no further jurisdiction to proceed pending mover's appeal, and, alternatively, for an order staying further proceedings herein pending said appeal, be dismissed.

(S.) G. R. Blue, George R. Blue, United States Attorney.

CERTIFICATE OF SERVICE (omitted in printing)

IN UNITED STATES DISTRICT COURT

HEARING ON MOTION OF DEFENDANT TO STAY ALL FURTHER PROCEEDINGS, ETC.—August 18, 1954

Wright, J.:

This matter came on this day for hearing on motion of defendant, The Leiter Minerals, Inc., to stay all further [fol. 286] proceedings, etc.

Present: M. Hepburn Many, Asst. U. S. Attorney; Charles D. Marshall, Attorney for The California Co., et

al.; S. W. Plauche, Jr., Attorney for The Leiter Minerals, Inc.;

Thereupon, after hearing argument of counsel, the matter was submitted and the Court took time to consider; counsel to file supplemental briefs by Monday, August 23rd, 1954.

IN UNITED STATES DISTRICT COURT

ORDER GRANTING MOTION TO STAY PROCEEDINGS—August 24, 1954

• • • • •
Wright, J.:

This matter came on for hearing on a former day on motion of defendant, The Leiter Minerals, Inc., to stay all further proceedings herein pending appeal from the judgment granting a temporary injunction; and the Court having taken time to consider the arguments and briefs of counsel for both sides,

It is ordered that, as a matter of discretion and in deference to whatever action the Court of Appeals may take on the appeal now pending, further action herein in this Court is stayed during the pendency of the appeal.

J. S. W.

[fol. 287] IN UNITED STATES DISTRICT COURT

MOTION AND ORDER TRANSMITTING EXHIBITS IN ORIGINAL—
Filed August 26, 1954

• • • • •
On motion of S. W. Plauche, Jr., attorney for defendant-appellant, in the above and foregoing matter, and on suggesting to the Court that defendant has taken an appeal from the order entered herein on June 24, 1954, to the Fifth Circuit Court of Appeals that the record reflects a voluminous number of exhibits which were introduced by the parties, and defendant desires these exhibits to be sub-

mitted to the 5th Circuit Court of Appeals in their original form; said exhibits being more fully described as follows:

Photostatic copy of proceedings in "Succession of Joseph Leiter", being No. 1319 of 24th Judicial District Court;

Map attached to photostatic copy of deed by and between Thomas Leiter and the United States executed 12/21/38;

Photostatic copy of proceedings in "Succession of Francis Joseph Lobrano, Jr.," No. 2945, 25th Judicial District Court, Plaquemines Parish;

Photostatic copy of proceedings "In Re: Mrs. Ethel M. Fontenelle, Widow of Francis Joseph Lobrano, Jr. —application for tutrixship, etc.," No. 3027 of 25th Judicial District Court, Plaquemines Parish;

Wherefore, it is ordered that the exhibits heretofore mentioned in the above motion be submitted with the record to the Fifth Circuit Court of Appeals in their original form.

(S.) J. Skelly Wright, United States District Judge.

New Orleans, Louisiana; August 27th, 1954.

Submitted: Plauche and Plauche, By (S.) S. W. Plauche, S. W. Plauche, Jr., Attorney for Defendant-Appellant.

[fol. 288] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 289] IN UNITED STATES DISTRICT COURT
Supplemental Transcript of Record

.

[fol. 290] EXHIBIT No. 16

Agreement

Know all men by these presents: that

Whereas, simultaneously with the execution of this agreement, Thomas Leiter has executed a conveyance unto Humble Oil & Refining Company, herein represented by L. T. Barrow, its vice President, duly authorized, hereinafter referred to as Humble, of all of the rights which Thomas Leiter acquired or retained in and to the oil and gas by virtue of the reservation made in the sale to the United States of America of certain land in Plaquemines Parish, Louisiana, by a deed dated December 21, 1938, recorded in COB 92, Folio 468, of the Conveyance Records of Plaquemines Parish, Louisiana, the deed to Humble and the deed to the United States of America being made a part hereof by reference for all purposes. The land described in the deed to Humble is hereinafter referred to for the sake of brevity as "the lands":

Now, therefore, Thomas Leiter and Humble have entered into a side agreement in terms as follows, to-wit:

Humble, at its option, may, within one year from date, conduct a survey of "the lands" by means of a gravity meter or seismograph or any other method it may see fit or may be permitted to do by the United States.

On or before one year from this date Humble will notify Thomas Leiter by letter addressed "Thomas Leiter, 21 East Van Buren Street, Chicago 5, Illinois," whether or not it desires to make an application for an oil and gas [fol. 291] lease from the United States on a portion or portions of "the lands" or whether it is no longer interested in "the lands". If Humble is not interested in applying for a lease or leases, then, upon so notifying Thomas Leiter, Humble will then be relieved of all obligations hereunder and upon Thomas Leiter's request, it

agrees to reconvey to him whatever rights it acquired under the deed from Thomas Leiter to it of this date.

If Humble is interested in a portion or portions of "the lands", Humble will before April 1, 1945, file an application with the proper department of the United States for an oil and gas lease, or leases, using reasonable diligence and effort in making said application. The procedure and method of making said application for said lease, or leases, the time for applying therefor, the identity of the portion or portions of "the lands" and the number of acres to be covered thereby being left to the sound discretion of Humble. Humble is hereby granted the right to exercise whatever rights, powers or authority, over the rights this day granted to it in the deed Humble may deem advisable in its efforts to obtain an oil and gas lease from the United States, including the right to convey to the United States the rights acquired in said deed. It is recognized by Thomas Leiter that in spite of Humble's diligent efforts Humble may not be successful in obtaining a lease from the United States, and therefore he releases Humble from any and all liability in the event Humble should be unsuccessful [fol. 292] in obtaining such a lease.

Should Humble be successful in obtaining an oil and gas lease or leases from the United States covering any portion or portions of "the lands", pursuant to any application filed before April 1, 1945, it agrees that it will convey to Thomas Leiter, his heirs and assigns, the equal $1/48$ part of all oil which may be produced and saved by Humble, its successors and assigns, from the portion or portions of "the lands" covered by said lease or leases, delivery of such oil to be made free of cost to the credit of Thomas Leiter into storage tanks by him provided or into the pipe line to which the wells on said premises may be connected. On dry gas or casinghead gas when marketed from said premises, Thomas Leiter shall be paid the $1/48$ part of the net proceeds at the wells derived therefrom; and on casinghead gas or other gaseous or vaporous substances produced from said premises and utilized by Humble in the extraction of gasoline, Thomas Leiter shall be paid $1/48$ part of the current market value at the wells of the casinghead gas or other gaseous or vaporous substances so utilized, and Humble shall not be required to make settle-

ment with Thomas Leiter therefor until Thomas Leiter shall have executed and delivered to Humble the form of casinghead division order then in use by Humble covering the casinghead gas so utilized. Fuel oil and gas for operating the premises and for treating and handling products therefrom (and the proportionate part of fuel oil and [fol. 293] gas consumed in a central plant, should this lease or leases be operated jointly with other premises through the use of such plant) shall be deducted before said royalties on oil and gas are computed. It is expressly agreed that neither Humble, nor its successors and assigns, shall be under any obligation against its or their will, either to preserve the lease or leases by rental payment, or to operate on said premises for the discovery, development or production of oil or gas, but all such rental payments and operations, and the extent and duration thereof, as well as the preservation of the leasehold or leaseholds, shall be solely at the will of Humble, its successors and assigns.

Thomas Leiter agrees that if he owns an interest, in the rights this day conveyed by deed to Humble, less than the entire and undivided interest, then, the overriding royalty herein provided for shall be payable to Thomas Leiter in the proportion which his interest in said rights bears to the entire and undivided interest.

Humble shall retain the right and power at its option, insofar as the overriding royalties herein provided for may be affected, to pool or combine the acreage covered by the lease or leases or any portion thereof with other land, lease or leases in the immediate vicinity thereof, when in Humble's judgment it is necessary or advisable to do so in order properly to develop and operate said premises in compliance with the spacing rules of the Conservation Commission of Louisiana or other State or Federal authorities, or when to do so would, in the judgment of [fol. 294] Humble, promote the conservation of the oil and gas in and under and that may be produced from said premises, such pooling to be into a unit or units at least as large as may be required or permitted by the lease or leases or any rule or regulation of the State or Federal authorities, or in the absence of any designated size, then into such unit or units as Humble may deem most advan-

tageous for the proper conservation of oil and gas, and the proper development of the premises. The entire acreage so pooled into a tract or unit shall be treated, for all purposes except the payment of royalties on production from the pooled unit, as if it were included in the lease or leases. In lieu of the overriding royalties herein provided for, Thomas Leiter shall receive on production from a unit so pooled only such portion of the overriding royalties stipulated herein as the amount of the acreage covered by the lease or leases from the United States placed in the unit bears to the total acreage so pooled in the particular unit involved. The pooling privileges retained by Humble shall extend to Humble, its heirs, successors, legal representatives and assigns.

If, due to some Federal restriction or order, Humble is unable to legally pay overriding royalty as above set forth, Thomas Leiter waives any claims against Humble because of failure to pay said royalty during the time such restriction or order is effective; provided, however, that Humble shall at all times pay to Thomas Leiter on oil, dry gas or casinghead gas produced from said premises the [fol. 295] maximum amount of royalty permitted by the United States to be paid by Humble to said Thomas Leiter, which said overriding royalty shall, however, in no event exceed 1/48.

Done and signed by Thomas Leiter at Cheyenne, State of Wyoming, on this 28th day of October, 1943.

(S.) Thomas Leiter.

Witnesses: (S.) Mildred Boyer, (S.) Grace Wiley.

Done and signed by Humble Oil & Refining Company at Houston, Texas, on this 8th day of November, 1943.

Humble Oil & Refining Company, By: (S.) L. T. Barrow, Vice President.

Witnesses: (S.) J. S. Clarke, (S.) Joanna Keith.

STATE OF WYOMING,
County of Laramie, ss.:

Before me, the undersigned authority, on this day personally appeared Thomas Leiter, who, being duly sworn,

on his oath deposes and says: That he executed the foregoing instrument for the purposes and consideration therein expressed and as his own free act and deed.

[fol. 296] Given under my hand and seal of office this 28th day of October, 1943.

(S.) Grace Wiley, Notary Public.

Comm. expires 3/18/47.

**THE STATE OF TEXAS,
County of Harris:**

Before me, the undersigned authority, on this day personally appeared L. T. Barrow, known to me to be the person whose name is subscribed to the foregoing instrument, as Vice President of Humble Oil & Refining Company, and acknowledged to me that he executed the same for the purpose and consideration therein expressed, in the capacity stated, and as the act and deed of said Humble Oil & Refining Company.

Given under my hand and seal of office, this the 8th day of November, A. D., 1943.

(S.) Margaret Lanford, Notary Public in and for Harris County, Texas.

[fol. 297] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 298] **Proceedings in the United States Court of
Appeals for the Fifth Circuit**

No. 15276

THE LEITER MINERALS, INC.,

versus

UNITED STATES OF AMERICA, ET AL.

ARGUMENT AND SUBMISSION—January 27, 1955

On this day this cause was called and, after argument by S. W. Plache, Jr., Esq., for appellant, and Eugene D. Saunders, Esq., M. Hepburn Many, Esq., Assistant United States Attorney, and Perry W. Morton, Esq., Assistant Attorney General, for appellees, was submitted to the Court.

[fol. 299] **IN THE UNITED STATES COURT OF APPEALS FOR THE
FIFTH CIRCUIT**

No. 15276

THE LEITER MINERALS, INC., APPELLANT,

versus

UNITED STATES OF AMERICA, ET AL., APPELLEES.

**Appeal from the United States District Court for the
Eastern District of Louisiana**

OPINION—June 30, 1955

Before Holmes and Borah, Circuit Judges; and Dawkins,
District Judge.

Borah, Circuit Judge: This is an action by the United States of America to quiet its title to the minerals and mineral rights which underlie certain lands in Plaquemines Parish, Louisiana; to cancel and have removed as clouds on that title the instruments evidencing appellant's

claimed ownership of the same property; and as incidental [fol. 300] thereto, to enjoin the prosecution of a petitory action now pending in the district court for Plaquemines Parish, brought by the appellant in this suit against Allen L. Lobrano, a mineral lessee of the United States, and The California Company which has an operating agreement with the Government's lessee, to establish its asserted claim of title to, and right to possession of, the minerals under the land in suit.

This appeal is from an interlocutory order granting a preliminary injunction restraining the appellants, their agents, principals, and all other persons whomsoever acting with them from prosecuting or attempting to prosecute its title suit in the State court pending the determination of this action; and also, from those parts of the same order denying appellant's motion to dismiss or alternatively to stay all further proceedings in the Federal court.

While we believe that the right of appeal is conferred only in respect to that portion of the order which granted the preliminary injunction¹ it is not our understanding that we are authorized to consider only the injunctive phase of the order, but that we may and should also examine that portion of the interlocutory order denying the motion to dismiss or stay, although normally such denial would be appealable only after a final decree. *Deckert v. Independence Corp.*, 311 U. S. 282. Appellant's motion sought to dismiss this action or to stay proceedings in it until the State court suit had been determined, on [fol. 301] the ground that the State court had previously assumed jurisdiction of the controversy and of the property involved. For the reasons hereinafter set forth we hold that this motion was correctly denied.

The complaint alleges that, pursuant to a contract of purchase and sale of March 14, 1935, between the United States and the executors and trustees of the Estate of Joseph Leiter, Thomas Leiter, as heir of Joseph Leiter, on December 21, 1938, conveyed to the United States approximately 8,711 acres of land in Plaquemines Parish, Louisiana. The deed contained a mineral reservation identical

¹ 28 U. S. C. §1292(1).

to that contained in the earlier agreement of March 14, 1935. The text of the mineral reservation is set forth in full in the complaint and the following is a summary of its provisions: The vendor reserved until April 1, 1945, the right to mine and remove all oil, gas and other valuable minerals; provided, that if for three years prior to April 1, 1945, mineral operations were conducted to commercial advantage for an average of at least 50 days per year, the mineral rights were to be extended for a further period of five years, but the right so extended would be limited to an area of twenty-five acres around each well producing or being drilled or developed on April 1, 1945. This right to mine as previously stated was to be further extended for additional periods of five years whenever operations during the preceding five years had been on an average of 50 days per year during this period. It was further provided that "at the termination of any extended period in case [fol. 302] the operations has not been carried on for the number of days stated, the right to mine shall terminate, and complete fee in the land become vested in the United States." After setting forth these facts the complaint alleges that no mineral operations within the meaning of the reservation were ever conducted on the land by the vendor or the appellant or anyone acting under or through them. Then follow the allegations that on March 1, 1949, the United States executed mineral leases covering portions of the property conveyed to it by Leiter to Frank J. and Albert Lobrano; that the Lobranos conveyed the operating rights under the leases to The California Company; that The California Company has drilled and completed 80 producing wells on the property, has produced and is now producing oil and gas in large quantities and that the United States has heretofore received more than \$3,500,000 in royalties. Continuous physical possession of the land by the United States since the date of its acquisition and of the minerals through its lessees are also set forth. The complaint further alleges that The Leiter Minerals, Inc., appellant herein, is wrongfully claiming to be the owner of the minerals beneath the property and has caused to be recorded certain instruments constituting clouds upon the title of the United States. It then sets forth the institution and nature of the action filed by ap-

pellant in the district court of Plaquemines Parish and states that the United States is entitled to have its title to the mineral rights quieted as against any claims of appellant and the clouds upon its title removed.

[fol. 303] We have no misgivings as to the sufficiency of the complaint and believe that the appellee is on firm ground in contending that in this suit, wherein the United States is plaintiff, the district court under the clear provisions of the statute (28 U. S. C. § 1345) became vested with exclusive jurisdiction to determine the title of the United States to the mineral rights claimed by appellant. All the parties necessary to make this determination were before the court and the court had jurisdiction to grant the relief prayed. *Humble Oil & Refining Co. v. Sun Oil Co.*, 5 Cir., 191 F. 2d 705.

In the state court action appellant as successor to Thomas Leiter claimed that it was the owner of all the minerals and all the mineral rights in, on, or that may be under the lands conveyed to the United States by Leiter by virtue of the mineral reservation contained in that deed. Obviously the controversy as to title is between the appellant and the United States, not between the appellant and the Government's mineral lessees, and from this it follows that the United States is an indispensable party. The appellant can obtain effective relief with respect to title only against it. But the United States is not a party, and because of its sovereign immunity from suit it cannot be made one without its consent, which it withholds. *Minnesota v. United States*, 305 U. S. 382; *Naganab v. Hitchcock*, 202 U. S. 473; *Louisiana v. Garfield*, 211 U. S. 70; *Stanley v. Schwalby*, 162 U. S. 255. Furthermore, the United States cannot lawfully intervene in the pending state court action as a party defendant as appellant argues it can and must because no [fol. 304] officer or agent of the United States has the power or authority to litigate the title of the United States in the state court action. *United States v. Shaw*, 309 U. S. 495; *United States v. U. S. Fidelity & Guaranty Co.*, 309 U. S. 506; *Stanley v. Schwalby*, *supra*; *Carr v. United States*, 98 U. S. 433.

The decision in *United States v. Bank of New York & Trust Co.*, 296 U. S. 463, upon which appellant strongly relies does not run counter to the views which we have ex-

pressed, because there, the Government had filed suit in the Federal court to assert its claim to a fund in the possession of "stakeholders" or "depositories" of the state court, and the Supreme Court, in affirming the dismissal of the Government's suit, simply held, in effect, that the United States should proceed by intervention in the State court action to distribute the fund since "the United States would be an actor voluntarily asserting what it deemed to be its rights—and not a defendant." 296 U. S. 463, 480.

The rule as to *in rem* actions which appellant invokes is predicted upon principles of comity between State and Federal courts of concurrent jurisdiction,² and it has no application here because the District Court, wherein the United States is plaintiff, has exclusive jurisdiction to determine the title of the United States to the minerals and mineral rights claimed by the appellant.

In the light of the foregoing, we hold that the District Judge, under the applicable statute (28 U. S. C. § 2283), [fol. 305] was right in concluding that a preliminary injunction should issue to preserve the status quo in order to prevent irreparable injury, and we adopt and quote with approval the following from his published opinion:³ "... should the state court proceeding come to final judgment dispossessing the mineral lessees of the United States before the litigation in federal courts is terminated, inestimable and irreparable damage will result to the United States from the interruption in the operations of its lessees on the premises, in the event the United States is ultimately declared the owner of the property in suit. This contingency can be avoided only by an abatement of the state court action." See *United States v. McIntosh*, 57 F. 2d 573, 580.

The order appealed from is affirmed.

² See *Covell v. Heyman*, 111 U. S. 176, 182.

³ *United States v. The Leiter Minerals, Inc., et als.*, 127 F. Supp 439, 444.

[fol. 306] IN UNITED STATES COURT OF APPEALS

THE LEITER MINERALS, INC.,

versus

UNITED STATES OF AMERICA, ET AL.

JUDGMENT—June 30, 1955

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the order of the said District Court appealed from in this cause be, and the same is hereby, affirmed.

[fols. 307-314] Petition for rehearing covering 8 pages filed omitted from this print.

It was denied, and nothing more by order.

[fol. 315] IN UNITED STATES COURT OF APPEALS

[Title omitted]

ORDER DENYING REHEARING—October 14, 1955

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 316] Clerk's Certificate to foregoing Transcript omitted in printing.

[fol. 317] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed February 27, 1956

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(9084-5)

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1955

No. ~~616~~ 76

THE LEITER MINERALS, INC.,

Petitioner,

versus

UNITED STATES OF AMERICA, ET AL.,

Respondents.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT.**

**VANCE PLAUCHE,
SAMUEL W. PLAUCHE, JR.,**
Counsel for Petitioner,
303 Pioneer Building,
Lake Charles, Louisiana.

CITATIONS—(Cases Continued)

	Page
Frost-Johnson Lumber Co. v. Salling's Heirs, 150 La. 756, 91 So. 207	6
Humble Oil & Refining Co. v. Sun Oil Co., 191 F. (2d) 705	15
Land v. Dollar, 330 U. S. 731, 91 L. Ed. 1209	2
Meredith v. City of Winter Haven, 320 U. S. 228, 88 L. Ed. 9	13
Meyer v. Bethlehem Shipbuilding Corp., 303 U. S. 41, 82 L. Ed. 638	2
Orton v. Smith, 18 How. 263, 15 L. Ed. 393	12
Princess Lida v. Thompson, 305 U. S. 456, 83 L. Ed. 285	12
Ray v. Liberty Industrial Life Ins. Co. (La. App.) 180 So. 855	14
Shaw v. Watson, 151 La. 893, 92 So. 375	5
Spector Motor Service v. McLaughlin, 323 U. S. 101, 89 L. Ed. 101	13
Stanley v. Schwalby, 162 U. S. 255, 16 S. Ct. 754, 40 L. Ed. 960	11
State ex rel. Pope v. Bunkie Coca-Cola Bottling Co., 222 La. 603, 63 So. (2d) 13	11
Toucey v. New York Life Ins. Co., 314 U. S. 118, 86 L. Ed. 100	12
United States v. Bank of New York & Trust Co., 296 U. S. 463, 80 L. Ed. 331	8, 9, 10, 11, 12, 16

CITATIONS—(Cases Continued)

	Page
United States v. General Motors Corp., 323 U. S. 373, 89 L. Ed. 311	2
United States v. Nebo Oil Co., 190 F. (2d) 1003, 90 F. Supp. 73	14, 17
United States v. Shaw, 309 U. S. 495, 60 S. Ct. 659, 84 L. Ed. 888	11
United States v. Standard Oil Co., 332 U. S. 301, 91 L. Ed. 2067	15
United States v. U. S. Fidelity & Guaranty Co., 309 U. S. 506, 60 S. Ct. 653, 84 L. Ed. 894	11
Westfeldt v. North Carolina Mining Co., 166 Fed. 706	12
Whitney Bank of New Orleans v. Little Creek Oil Co., 212 La. 949, 33 So. (2d) 693	14
Statutes:	
Title 28, U. S. C., Section 1254	2
Title 28, U. S. C., Section 2283	3
Title 28, U. S. C., Section 1292	8
Louisiana Code of Practice, Article 43	4, 5, 12
Louisiana Code of Practice, Article 392	4, 11
Act 315 of the Legislature of Louisiana for the Year 1940 (Louisiana Revised Statutes 9:5806)	5, 13, 14, 17
Miscellaneous:	
Moore's Commentary on the U. S. Judicial Code	3

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1955

No. _____

THE LEITER MINERALS, INC.,

Petitioner,

versus

UNITED STATES OF AMERICA, ET AL.,

Respondents.

**PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT.**

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above-entitled case on June 30, 1955.

CITATIONS TO OPINIONS BELOW.

The opinion of the District Court (R. 262-276) is reported in 127 F. Supp. 439. The opinion of the Court of Appeals (R. 299-305) is reported in 224 F. (2d) 381, and for convenience is printed in Appendix B hereto, *infra*, p. 19, *et seq.*

JURISDICTION.

The judgment of the Court of Appeals was entered on June 30, 1955 (R. 306). A petition for rehearing, timely filed by petitioner, was denied on October 14, 1955 (R. 315). The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1).

It is recognized that ordinarily this Court will not review an interlocutory decision, but that rule of practice has no application where, as here, there was "an insuperable objection to the maintenance of the suit in point of jurisdiction"; and where, also as here, it appears that the decree granting the preliminary injunction against petitioner's prosecution of the previously filed *in rem* title suit in the State Court "was the result of an improvident exercise of judicial discretion", *Meyer v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41, 52, 82 L. Ed. 638, 645. It is, therefore, appropriate that at this stage of the proceedings the interlocutory decree granting the said preliminary injunction be reviewed because the decree involves "an issue fundamental to the further conduct of the case * * *", *United States v. General Motors Corp.*, 323 U. S. 373, 377, 89 L. Ed. 311, 318; *Land v. Dollar*, 330 U. S. 731, 735, 91 L. Ed. 1209, 1214.

QUESTIONS PRESENTED.

Whether the United States, in connection with its *in rem* action filed in Federal Court, may enjoin a previously filed and pending *in rem* action in a State Court of concurrent and coordinate jurisdiction, or whether, as petitioner contends, the subsequently filed *in rem* action in Federal Court must be dismissed or abated, or, at least, stayed, pending the determination of the State Court suit.

This basic question involves the subsidiary questions of (1) whether the United States District Court has exclusive jurisdiction to determine the title of the United States to real property; or (2) as petitioner contends, whether the United States may be required to intervene in the previously instituted *in rem* suit pending in the State Court.

STATUTES INVOLVED.

There is not squarely involved any Federal or State statute, although there are incidentally involved the provisions of the Federal and State statutory law to which we now briefly refer.

Title 28, U. S. C., Section 2283, is the present congressional affirmation of the general rules of comity which are brought into play in the instant controversy. This Statute reads:

"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments. June 25, 1948, c. 646, 62 Stat. 968."¹

¹The great weight of lower court authority (see Moore's Commentary on the U. S. Judicial Code, p. 408, and lower court cases contained in footnote 54b on that page) is to the effect that the prohibition of Section 2283 does not apply to suits by the United States in its Courts, and that, in proper cases, an injunction may issue against state court proceedings. This in no way militates against the principle invoked by petitioner below, and asserted here, that the United States may not maintain a suit in the Federal Courts that interferes with a valid and subsisting *in rem*, or quasi *in rem*, jurisdiction of a state court.

The procedural basis for petitioner's previously filed State Court real action, now temporarily enjoined by the Court below, is *Article 43 of the Louisiana Code of Practice*, reading as follows:

"43. *Parties defendant—Lessee's duty to declare name of lessor.*—The petitory action, or one by which real property, or any immovable right to such property may be subjected, is claimed, *must be brought* against the person who is in the actual possession of the immovable; *even if the person having the possession be only the farmer or lessee.*²

"But if the farmer or lessee of a real estate be sued for that cause of action, he must declare to the plaintiff the name, and the residence of his lessor, who shall be made a party to the suit, if he reside in the State, or is represented therein, and who must defend it in the place of the tenant, who shall be discharged from the suit."

Further in connection with the position of petitioner there is involved *Article 392 of the Louisiana Code of Practice*³, reading as follows:

"392. *Court in which intervention had.*—The plaintiff in intervention must institute his demand before the court in which the principal action has been brought; *being considered as plaintiff*, he must follow the jurisdiction of the defendant."

²All emphasis by petitioner unless otherwise noted.

³Article 392 and the Louisiana jurisprudence thereunder are one of the bases of petitioner's contention that to require the United States to intervene in the pending and previously filed State Court real action would not make the United States a party defendant being sued without its consent.

Finally, there is indirectly involved consideration of Act 315^o of the Legislature of Louisiana for the year 1940 (Louisiana Revised Statutes 9:5806), since it is this 1940 Louisiana Act upon which petitioner's claim, on the merits, to the minerals involved in the two *in rem* suits is based. This Louisiana Act is printed in Appendix A, *infra*, p. 18.

STATEMENT.

Petitioner filed its State Court petitory action (R. 192-204)⁴ in the Twenty-fifth Judicial District Court in and for Plaquemines Parish, Louisiana, on August 13, 1953. The petitory action in Louisiana is one of the recognized types of real action. (See, *Article 43, Louisiana Code of Practice, supra*, p. 4.) It is only the minerals (or mineral rights) under the land in Plaquemines Parish which are involved in the State Court action, as well as in this, the subsequently filed, Federal Court suit. In Louisiana the minerals (or mineral rights) involved in both suits constitute immovable, or real, property. *Shaw v. Watson*, 151 La. 893, 92 So. 375. Under Louisiana law oil and gas in place are not subject to ownership, as specific things apart from the soil which they underlie; and since in Louisiana there can be no mineral estate in oil and gas as such, the sale or reservation of minerals is merely a grant or retention of right to go on land for exploration or exploitation of minerals, constituting a real right in the nature of a servitude or easement, which in

⁴The *Lelter Minerals, Inc. v. The California Company, et al.*, No. 3282, Plaquemines Parish, Louisiana.

turn prescribes, or expires by limitation, in ten years if not used.⁵

Petitioner's State Court action, as expressly authorized and required by the Louisiana Code of Practice, was brought against The California Company, the operator under subleases from Allen J. Lobrano, and against Lobrano as holder of leases granted to him by the United States. The State Court action was properly brought against these parties, as the State Judge, District Judge Bruce Nunez, ultimately held prior to the time that petitioner was restrained from proceeding in the State Court suit. (See decision of Judge Nunez, R. 27-32, and authorities therein cited.)

After a futile attempt had been made by The California Company and Lobrano to remove petitioner's State Court action to the United States District Court for the Eastern District of Louisiana, the State Court defendants filed various exceptions (R. 24-26), challenging the jurisdiction of the Plaquemines Parish Court, and further urging that there was the absence of an indispensable party in the State Court action (*viz.*, the United States), and, finally, that the State Court petition disclosed no cause or

⁵This has been the settled law of Louisiana since the 1922 decision of *Frost-Johnson Lumber Co. v. Salling's Heirs, et al.*, 150 La. 756, 91 So. 207. On the merits of the present title controversy, in both the State and Federal Court cases, the fundamental question involved is whether the 1938 mineral reservation in the sale to the United States by petitioner's predecessor in title was made "imprescriptible" by Louisiana Act 315 of 1940 (printed in full in Appendix A, *infra*, p. 18).

⁶In ordering the action remanded to the State Court District Judge J. Skelly Wright noted: "A federal question may be 'lurking in the background' in this case, but its presence is not sufficiently disclosed by plaintiff's petition, nor is the question, if present, a substantial one."

right of action (which last exceptions, in Louisiana, are similar to a general demurrer).

In due course the exceptions in the State Court suit were presented to the State District Court on oral argument and briefs, and on March 23, 1954, Judge Nunez overruled all of the exceptions, handing down written reasons (R. 27-32).

On March 17, 1954, shortly before the State District Judge ruled upon the exceptions filed in the State Court proceeding, the present action (R. 2-24) was commenced by the United States in the Federal Court for the Eastern District of Louisiana. The present action, which is one to quiet the title of the United States to the same mineral rights which are made the subject of the title suit in the State Court, was, therefore, filed over seven months after the commencement of the State Court suit, and after issue had been joined by the defendants in the State Court.

Coupled with the prayer of the United States in the present action to have its title quieted, and to have the alleged "clouds" upon its alleged title cancelled and removed, is the prayer of the United States that petitioner be enjoined from claiming any further interest in the property, and particularly that petitioner be enjoined from prosecuting the State Court suit (R. 18-19).

The complaint in the Federal Court suit was met by petitioner's motion to dismiss or abate, or, alternatively, for a stay of, the subsequently filed Federal action. Petitioner's motion was based upon the pendency of the petitory action previously brought by petitioner in the Louisiana State Court, and upon the familiar rule that

where two actions are pending in courts of coordinate jurisdictions, and where the two actions are *in rem*, or *quasi in rem*, the Court which is subsequently resorted to is disabled from exercising any power over the property in litigation, or from interfering with the already pending litigation itself.

The District Court overruled petitioner's motions (R. 262-276), and proceeded at the same time to enter the temporary injunction prayed for by the United States; and on petitioner's appeal⁷ the Court of Appeals for the Fifth Circuit affirmed (R. 299-305).

REASONS FOR GRANTING THE WRIT.

1. The decisions of the Courts below in the instant case are directly in conflict with the decision of this Court in *United States v. Bank of New York & Trust Co.*, 296 U. S. 463, 80 L. Ed. 331 (1936), and the attempts of the Lower Courts in this case to distinguish the *Bank of New York & Trust Co.* case are not well founded. In *United States v. Bank of New York & Trust Co.*, this Court held that the "priority-of-jurisdiction" rule was fully applicable to the United States, and that, therefore, the United States was not entitled to proceed in the Federal Court to establish its title to certain Russian Insurance Company funds allegedly assigned to the Government by the Republic of Russia where jurisdiction over the funds had already

⁷Although the right of appeal from the District Court's interlocutory order of injunction is expressly conferred by Title 28, U. S. C., Section 1292, only in respect of the injunctive feature of the order, the appellate jurisdiction also embraces that portion of the order which overruled petitioner's motion to dismiss or abate, inasmuch as the said motion is basic to and underlies the injunctive order itself. *Deckert v. Independence Shares Corp.*, 311 U. S. 282, 85 L. Ed. 189.

been assumed in state court actions pending in State district courts of New York.

In the instant case, the Court of Appeals, in seeking to distinguish the *Bank of New York & Trust Co.* case, said (R. 304) that the funds in that case were "in the possession of 'stakeholders' or 'depositories' of the state court", the intimation being that the *res* in the state court in that case was *in custodia legis* in connection with liquidation proceedings brought by the New York Superintendent of Insurance. But in two^s of the cases the liquidation had been completed, and in at least one of the three cases the only state court suit that was pending was a suit between the Russian insurance company and its sole surviving director claiming ownership or other appropriate disposition of the funds. In other words, there was in the New York state courts a pending "title suit" to the funds which were on deposit in the Bank of New York & Trust Company. The funds were not under seizure or *in custodia legis*. Nevertheless, the United States was held not authorized subsequently to bring its "title" suit in the Federal Court to secure recognition of its ownership of, and right to possession to, the funds over which state court litigation was already pending, and the Federal Court suit of the United States was dismissed.

Again in the present case the Court of Appeals (R. 303) stated that the United States "is an indispensable party" in petitioner's previously filed State Court suit. The same situation existed in the *Bank of New York & Trust Co.* case, where obviously the United States had not

^sThere were three separate actions which were consolidated for decision by this Court, one of which, the title case, involved the respondent Bank of New York & Trust Co.

been joined as a party defendant in the suits over the funds which were filed in the New York state court.

And yet again, the Court below held inapplicable (R. 304) the "rule as to *in rem* actions" which petitioner invoked, saying that that rule is applicable only to "State and Federal courts of concurrent jurisdiction", and that "it has no application here because the District Court, wherein the United States is plaintiff, *has exclusive jurisdiction* to determine the title of the United States to the minerals and mineral rights claimed by [petitioner]". This quoted holding of the Court below is directly at odds with the precise holding of the *Bank of New York & Trust Co.* case (296 U. S. 479, 80 L. Ed. 339), that the fact that the complainant is the United States does not justify a departure from the *in rem*, or priority of jurisdiction, rule, and that "the grant of jurisdiction to the District Court in suits brought by the United States does not purport to confer exclusive jurisdiction."

Still again, the holding of this Court in the *Bank of New York & Trust Co.* case that the United States would be required to present its claim in the State Court proceedings, and that in doing so the United States would not be taking "the position of a defendant,—being sued without its consent" is in the present case directly opposed by the holding of the Lower Court, which said (R. 303-304) that "the United States cannot lawfully intervene in the pending state court action as a party defendant as appellant argues it can and must because no officer or agent of the United States has the power or authority to litigate the title of the United States in the state court action." In this connection, petitioner's position was misstated by the Court below in the next preceding quota-

tion, as petitioner has never suggested that the United States intervene in the State Court action as a *defendant*. Under Louisiana practice the United States, as intervener in the State Court proceeding, would of necessity "be considered as plaintiff".⁹ The Louisiana practice in regard to the position of interveners is perfectly in harmony with Your Honors' ruling in the *Bank of New York & Trust Co.* case, where you held:

"There is no merit in the suggestion that the United States, in presenting its claim in the state proceedings, would be compelled to take the position of a defendant,—being sued without its consent. In intervening for the presentation of its claim, the United States would be an actor—voluntarily asserting what it deemed to be its rights—and not a defendant. We cannot see that there would be impairment of any rights the United States may possess, or any sacrifice of its proper dignity as a sovereign, if it prosecuted its claim in the appropriate forum where the funds are held."

The reliance of the Lower Court on the four decisions¹⁰ of this Court which it cited is entirely misplaced.

⁹Louisiana Code of Practice Article 392, *supra*, p. 4. See also the latest decision of the Louisiana Supreme Court in *State, ex rel. Pope v. Bunkie Coca-Cola Bottling Co.*, 222 La. 603, 63 So. (2d) 13, 14 (1953), holding: "It follows that while an intervener is considered as plaintiff, insofar as he must follow the jurisdiction of the defendant, he is, nevertheless a plaintiff in intervention who fights for his own hand; that is, he does not lose his identity in that of the original plaintiff, neither does he lose such identity in that of the original defendants."

¹⁰*United States v. Shaw*, 309 U. S. 495, 60 S. Ct. 659, 84 L. Ed. 888; *United States v. U. S. Fidelity & Guaranty Co.*, 309 U. S. 506, 60 S. Ct. 653, 84 L. Ed. 894; *Stanley v. Schwalby*, 162 U. S. 255, 16 S. Ct. 754, 40 L. Ed. 960; and *Carr v. United States*, 98 U. S. 433, 25 L. Ed. 209.

In none of these four cases was the priority-of-jurisdiction, or *in rem*, rule involved, and this rule upon which petitioner relies is consonant with the immunity-from-suit rule for which these cited cases stand.

In neither of the Courts below were there any other reasons advanced for the inapplicability of the priority-of-jurisdiction rule than as has already been suggested in this petition. Nor could there have been advanced any other valid reason. The State and Federal Court suits in the present matter both qualify as *in rem*, or *quasi in rem*, actions.¹¹

It is no test of the applicability of the principle which petitioner has invoked that the mineral rights which constitute the immovable *res* at stake in the respective State and Federal actions, are not presently under actual seizure, or that the property is not currently held *in custodia legis*.¹²

¹¹Louisiana Code of Practice, Article 43; *Ferriday v. Middlesex Banking Co.*, 118 La. 770, 43 So. 403 (where the exact converse of the present situation existed,—and where the Louisiana Supreme Court stayed further proceedings in the subsequently filed State Court petitory action, by reason of the prior pendency of a petitory action in Federal Court); *Toucey v. New York Life Ins. Co.*, 314 U. S. 118, 86 L. Ed. 100; *Chittenden v. Brewster*, 2 Wall. 191, 17 L. Ed. 839; *Covell v. Heyman*, 111 U. S. 176, 28 L. Ed. 390, 393; *Orton v. Smith*, 18 How. 283, 15 L. Ed. 393; and *Westfeldt v. North Carolina Mining Co.*, 166 Fed. 706 (per Mr. Chief Justice Fuller, sitting as Circuit Justice).

¹²*United States v. Bank of New York & Trust Co.*, *supra*; *Farmers Loan & T. Co. v. Lake Street Elevated R. Co.*, 177 U. S. 51, 44 L. Ed. 667; *Princess Lida v. Thompson*, 305 U. S. 456, 83 L. Ed. 285. And see *Emil v. Hanley*, 130 F. (2d) 369, 370, where Circuit Judge Learned Hand accurately said that "for priority between courts in point of jurisdiction depends, not upon the day when the property comes into their possession but upon that of the commencement of the first suit in which possession can be taken."

2. Petitioner, in the alternative, has contended from the inception of this matter (R. 37) that the present Federal suit should be stayed until the final determination of the previously filed State Court suit, for the further reason that "the said pending litigation in said State Court involves questions of State law which should be determined and decided by the State Courts, in that said determination will provide a binding rule of decision upon this Court, and further said State Court decision may render a decision of federal constitutional questions unnecessary."

Although petitioner strenuously asserted this alternative proposition in the Court below, the Court of Appeals disregarded, and did not even mention, this point which is well supported by authority. *Spector Motor Service v. McLaughlin*, 323 U. S. 101, 89 L. Ed. 101, 103. Cf., *Meredith v. City of Winter Haven*, 320 U. S. 288, 88 L. Ed. 9, 14. As Mr. Justice Frankfurter expressed the rule in the *Spector Motor Service* case:

"And so, as questions of federal constitutional power have become more and more intertwined with preliminary doubts about local law, we have insisted that federal courts do not decide questions of constitutionality on the basis of preliminary guesses regarding local law."

As the District Judge in this case correctly said (R. 272), "the ownership of these mineral rights will turn on an interpretation of a state statute" of Louisiana. The statute in question, as we have already noted, is Act 315 of the Legislature of Louisiana for 1940 (Louisiana Revised Statutes 9:5806), quoted in Appendix A, *infra*,

p. 18). This Statute has been held to be retroactive by the Court of Appeals, Fifth Circuit, in *United States v. Nebo Oil Co.*, 190 F. (2d) 1003, affirming the decision of the District Judge, 90 F. Supp. 73. The same conclusion was reached by the Louisiana Supreme Court in *Whitney Bank of New Orleans v. Little Creek Oil Co.*, 212 La. 949, 33 So. (2d) 693. However, the Supreme Court of Louisiana has not yet rendered any decision (as it would be required to do in petitioner's pending and now enjoined State Court suit) in respect of a mineral reservation contained in a deed from a vendor directly in favor of the United States, as is the situation on the merits in the present controversy; and such an important question of local law, involving as it does the legislatively avowed public policy of Louisiana, should require the Federal Court to refuse to entertain jurisdiction of such a question, rather than to make "guesses" at what the State decision ultimately may be.¹³

This "doctrine of abstention" therefore appears particularly appropriate in the present matter, where,

¹³The decision of State Judge Nunez in the presently enjoined State action, which is, of course, not presented for consideration or decision at this time, was based upon his analysis and interpretation of the language of the subject mineral reservation. Judge Nunez determined that the alleged conventional termination date of the mineral servitude, to-wit: April 1st, 1945, related only to the right of entry, and did not affect the mineral reservation as a whole, (R. 31, 32). Even if the question on the merits were to be debated upon the plane selected by opposing counsel (i. e., that the 1940 Louisiana Act relates only to prescription for non-user, and not to a mineral servitude with a contractual termination date), there would still remain, among other problems, the important question of whether the Louisiana Statute would apply as well to a conventional period of limitation as it does to the statutory or codal limitation or prescription of ten years, as petitioner seriously contends. Cf., *Ray v. Liberty Industrial Life Ins. Co.*, (La. App., 1938), 180 So. 855.

upon the merits, the question of the controverted title to the mineral rights must be resolved primarily and ultimately upon an application of Louisiana law. It will not do to say that the Government's title to the minerals involved in this controversy must be determined by some law of property foreign to Louisiana, inasmuch as Congress has not acted (and it is questionable whether Congress could constitutionally have acted)¹⁴ in respect of the ownership of the mineral question. As Mr. Justice Rutledge said for the Court in *United States v. Standard Oil Co.*, 332 U. S. 301, 308, 91 L. Ed. 2067, 2072:

"It is true, of course, that in many situations, and apart from any supposed influence of the Erie decision, rights, interests and legal relations of the United States are determined by application of state law, where Congress has not acted specifically. . . . The Government, for instance, may place itself in a position where its rights necessarily are determinable by state law, as when it purchases real estate from one whose title is invalid by that law in relation to another's claim."

3. Manifestly, the questions presented are of vital importance, and the decision below is wholly inconsistent with the previously "long recognized duty of this Court to give effect to such 'methods of procedure as shall serve to conciliate the distinct and independent tribunals of the States and of the Union, so that they may cooperate as

¹⁴In *Humble Oil & Refining Co. v. Sun Oil Co.*, 191 F. (2d) 705, 713 (1951), Circuit Judge Holmes for the Court of Appeals, Fifth Circuit, said: "The federal constitution reserved to the states at least as much legislative power to alter equitable rights as it did legal rights; in fact, land law has always been deemed a matter of local sovereignty; this was true even under *Swift v. Tyson*, 16 Pet. 1, 10 L. Ed. 865."

harmonious members of a judicial system coextensive with the United States' ".¹⁶

Although the District Judge in the present case expressed awareness of the delicacy and difficulty of the problem presented by the requested injunction against the State proceeding (R. 265), and although he further acknowledged that "one of the highest duties of a federal court sitting in equity is to avoid unseemly conflict of authority between state and federal courts" (R. 266), the decisions of the Lower Courts disobey the rule which apparently the Lower Court recognized as generally valid.

The great importance of the present case and the questions presented has been repeatedly attested by counsel for the United States. At a very early stage in the proceedings, and before the District Judge had rendered his decision overruling petitioner's motion to dismiss, and granting the temporary injunction against the State action, the Department of Justice filed a special memorandum opposing petitioner's motion to dismiss, saying, *inter alia*, in substance that a ruling on the present issue would affect "the course and conduct of pending and future litigation of a similar character throughout the country." And when this case was pending on appeal, the United States, for good cause shown, secured two successive extensions of time within which to file its brief. In the first motion for an extension of time it was stated by counsel for the United States that "This case is of great importance, * * * ", and in the motion for the second extension of time it was stated "Further, that this matter involves a very serious legal question involving many mil-

¹⁶Chief Justice Hughes, speaking for the Court in *United States v. Bank of New York & Trust Co.*, 296 U. S. 477, 478, 80 L. Ed. 338.

lions of dollars to the United States Government in the instant case and may well establish precedents in future cases and the Government is in need of this additional time for the purpose of more fully researching the problems presented and to overcome the handicaps due to illness stated above."

It is true that this controversy on the merits involves enormous values, which fact, although introducing an additional element of importance in the present case, should not be allowed to becloud the vital importance of the legal questions presented by this petition. The United States has acquired, or has attempted to acquire, title to vast areas of land in the State of Louisiana¹⁶, and although no figures are available to petitioner, it is a matter of common knowledge that many similar acquisitions throughout the country have been consummated within recent years.

CONCLUSION.

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted,

VANCE PLAUCHE,

SAMUEL W. PLAUCHE, JR.,

Counsel for Petitioner.

¹⁶In *United States v. Nebo Oil Co.*, 90 F. Supp. 73, 100, (involving the same 1940 Louisiana Statute which is the foundation of petitioner's claim to the minerals involved in this case on the merits), District Judge Porterie stated: "Moreover, the Federal Government is the largest landowner in Louisiana, and the dedication of large tracts for public purposes, such as forests and game preserves, withdraws these lands from commerce. It would appear entirely reasonable under these circumstances for the Louisiana Legislature to do all in its power to preserve the mineral rights in its citizens.

APPENDIX A.**ACT No. 315****AN ACT**

Providing that when land is acquired by conventional deed or contract, condemnation or expropriation proceedings by the United States of America, or any of its subdivisions or agencies, from any person, firm or corporation, and the act of acquisition, verdict or judgment contains a reservation of oil, gas and/or other minerals or royalties or provides that said land passes subject to a prior sale or reservation of oil, gas and/or other minerals or royalties, still extant, said rights so reserved or previously sold shall be imprescriptible; and repealing Acts 68 and 151 of 1938 and other laws, general or special, inconsistent herewith.

Section 1. Be it enacted by the Legislature of Louisiana, That when land is acquired by conventional deed or contract, condemnation or expropriation proceedings by the United States of America, or any of its subdivisions or agencies, from any person, firm or corporation, and by the act of acquisition, verdict or judgment, oil, gas, and/or other minerals or royalties are reserved, or the land so acquired is by the act of acquisition conveyed subject to a prior sale or reservation of oil, gas and/or other minerals or royalties, still in force and effect, said rights so reserved or previously sold shall be imprescriptible.

Section 2. That Act 68 and Act 151 of 1938 and all other laws or parts of laws, general or special, in conflict herewith are hereby repealed.

Approved by the Governor: July 20, 1940

APPENDIX B.
IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 1527.

THE LEITER MINERALS, INC., Appellant,
versus
UNITED STATES OF AMERICA, ET AL., Appellees.

Appeal from the United States District Court for the
Eastern District of Louisiana.

(June 30, 1955.)

Before **HOLMES** and **BORAH**, Circuit Judges, and
DAWKINS, District Judge.

BORAH, Circuit Judge: This is an action by the United States of America to quiet its title to the minerals and mineral rights which underlie certain lands in Plaquemines Parish, Louisiana; to cancel and have removed as clouds on that title the instruments evidencing appellant's claimed ownership of the same property; and as incidental thereto, to enjoin the prosecution of a petitory action now pending in the district court for Plaquemines Parish,

brought by the appellant in this suit against Allen L. Lobrano, a mineral lessee of the United States, and The California Company which has an operating agreement with the Government's lessee, to establish its asserted claim of title to, and right to possession of, the minerals under the land in suit.

This appeal is from an interlocutory order granting a preliminary injunction restraining the appellants, their agents, principals, and all other persons whomsoever acting with them from prosecuting or attempting to prosecute its title suit in the State court pending the determination of this action; and also, from those parts of the same order denying appellant's motion to dismiss or alternatively to stay all further proceedings in the Federal court.

While we believe that the right of appeal is conferred only in respect to that portion of the order which granted the preliminary injunction¹ it is not our understanding that we are authorized to consider only the injunctive phase of the order, but that we may and should also examine that portion of the interlocutory order denying the motion to dismiss or stay, although normally such denial would be appealable only after a final decree. *Deckert v. Independence Corp.*, 311 U. S. 282. Appellant's motion sought to dismiss this action or to stay proceedings in it until the State court suit had been determined, on the ground that the State court had previously assumed jurisdiction of the controversy and of the property involved. For the reasons hereinafter set forth we hold that this motion was correctly denied.

¹28 U. S. C., Section 1292(1).

The complaint alleges that, pursuant to a contract of purchase and sale of March 14, 1935, between the United States and the executors and trustees of the Estate of Joseph Leiter, on December 21, 1938, conveyed to the United States approximately 8,711 acres of land in Plaquemines Parish, Louisiana. The deed contained a mineral reservation identical to that contained in the earlier agreement of March 14, 1935. The text of the mineral reservation is set forth in full in the complaint and the following is a summary of its provisions: The vendor reserved until April 1, 1945, the right to mine and remove all oil, gas and other valuable minerals; provided, that if for three years prior to April 1, 1945, mineral operations were conducted to commercial advantage for an average of at least 50 days per year, the mineral rights were to be extended for a further period of five years, but the right so extended would be limited to an area of twenty-five acres around each well producing or being drilled or developed on April 1, 1945. This right to mine as previously stated was to be further extended for additional periods of five years whenever operations during the preceding five years had been on an average of 50 days per year during this period. It was further provided that "at the termination of any extended period in case the operations has not been carried on for the number of days stated, the right to mine shall terminate, and complete fee in the land become vested in the United States." After setting forth these facts the complaint alleges that no mineral operations within the meaning of the reservation were ever conducted on the land by the vendor or the appellant or anyone acting under or through them. Then follow the allegations that on March 1, 1949, the United States executed mineral leases covering portions of the property conveyed to it by

Leiter to Frank J. and Albert Lobrano; that the Lobranos conveyed the operating rights under the leases to The California Company; that The California Company has drilled and completed 80 producing wells on the property, has produced and is now producing oil and gas in large quantities and that the United States has heretofore received more than \$3,500,000 in royalties. Continuous physical possession of the land by the United States since the date of its acquisition and of the minerals through its lessees are also set forth. The complaint further alleges that The Leiter Minerals, Inc., appellant herein, is wrongfully claiming to be the owner of the minerals beneath the property and has caused to be recorded certain instruments constituting clouds upon the title of the United States. It then sets forth the institution and nature of the action filed by appellant in the district court of Plaquemines Parish and states that the United States is entitled to have its title to the mineral rights quieted as against any claims of appellant and the clouds upon its title removed.

We have no misgivings as to the sufficiency of the complaint and believe that the appellee is on firm ground in contending that in this suit, wherein the United States is plaintiff, the district court under the clear provisions of the statute (28 U. S. C., Section 1345) became vested with exclusive jurisdiction to determine the title of the United States to the mineral rights claimed by appellant. All the parties necessary to make this determination were before the court and the court had jurisdiction to grant the relief prayed. *Humble Oil & Refining Co. v. Sun Oil Co.*, 5 Cir., 191 F. (2d) 705.

In the state court action appellant as successor to Thomas Leiter claimed that it was the owner of all the

minerals and all the mineral rights in, on, or that may be under the lands conveyed to the United States by Leiter by virtue of the mineral reservation contained in that deed. Obviously the controversy as to title is between the appellant and the United States, not between the appellant and the Government's mineral lessees, and from this it follows that the United States is an indispensable party. The appellant can obtain effective relief with respect to title only against it. But the United States is not a party, and because of its sovereign immunity from suit it cannot be made one without its consent, which it withholds. *Minnesota v. United States*, 305 U. S. 382; *Naganab v. Hitchcock*, 202 U. S. 473; *Louisiana v. Garfield*, 211 U. S. 70; *Stanley v. Schwalby*, 162 U. S. 255. Furthermore, the United States cannot lawfully intervene in the pending state court action as a party defendant as appellant argues it can and must because no officer or agent of the United States has the power or authority to litigate the title of the United States in the state court action. *United States v. Shaw*, 309 U. S. 495; *United States v. U. S. Fidelity & Guaranty Co.*, 309 U. S. 506; *Stanley v. Schwalby*, *supra*; *Carr v. United States*, 98 U. S. 433.

The decision in *United States v. Bank of New York & Trust Co.*, 296 U. S. 463, upon which appellant strongly relies does not run counter to the views which we have expressed, because there, the Government had filed suit in the Federal Court to assert its claim to a fund in the possession of "stakeholders" or "depositories" of the state court, and the Supreme Court, in affirming the dismissal of the Government's suit, simply held, in effect, that the United States should proceed by intervention in the State court action to distribute the fund since "the United States

would be an actor—voluntarily asserting what it deemed to be its rights—and not a defendant.” 296 U. S. 463, 480.

The rule as to *in rem* actions which appellant invokes is predicated upon principles of comity between State and Federal courts of concurrent jurisdiction², and it has no application here because the District Court, wherein the United States is plaintiff, has exclusive jurisdiction to determine the title of the United States to the minerals and mineral rights claimed by the appellant.

In the light of the foregoing, we hold that the District Judge, under the applicable statute (28 U. S. C., Section 2283), was right in concluding that a preliminary injunction should issue to preserve the status quo in order to prevent irreparable injury, and we adopt and quote with approval the following from his published opinion:³ “... should the state court proceeding come to final judgment dispossessing the mineral lessees of the United States before the litigation in federal courts is terminated, inestimable and irreparable damage will result to the United States from the interruption in the operations of its lessees on the premises, in the event the United States is ultimately declared the owner of the property in suit. This contingency can be avoided only by an abatement of the state court action.” See *United States v. McIntosh*, 57 F. (2d) 573, 580.

The order appealed from is **AFFIRMED**.

²See *Covell v. Heyman*, 111 U. S. 176, 182.

³*United States v. The Leiter Minerals, Inc., et als.*, 127 F. Supp. 439, 444.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1955

No. ~~616~~ 26

THE LEITER MINERALS, INC.,

Petitioner,

versus

UNITED STATES OF AMERICA, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

REPLY OR SUPPLEMENTAL BRIEF IN SUPPORT OF
THE PETITION FOR A WRIT OF CERTIORARI.

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INDEX

	Page
ARGUMENT	1
CONCLUSION	7
Appendix "A"—Opinion of United States Court of Appeals for the Fifth Circuit in Gulf Refining Company v. Isaac R. Price, et al., No. 15,622	8

Citations

Dreux, et al., v. Kennedy, et al., 12 Robinson (La. Reps.) 489	3
Gulf Refining Company v. Isaac R. Price, et al., No. 15,622, United States Court of Appeals for the Fifth Circuit	2, 3, 4, 5
State, ex rel. Pope v. Bunkie Coca-Cola Bottling Co., 222 La. 603, 63 So. (2d) 13	6
United States v. Bank of New York & Trust Co., 296 U. S. 463, 80 L. Ed. 331	5, 6

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1955

No. 616

THE LEITER MINERALS, INC.,

Petitioner,

versus

UNITED STATES OF AMERICA, ET AL.,

Respondents.

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT.**

**REPLY OR SUPPLEMENTAL BRIEF IN SUPPORT OF
THE PETITION FOR A WRIT OF CERTIORARI.**

ARGUMENT.

May It Please the Court:

1. But for the fact that the Court below has just rendered a decision which is completely at odds with the decision complained of in this case, petitioner would not

feel impelled to file a reply or supplemental brief in answer to the brief of the United States in opposition, as it is evident that the brief of counsel for the United States does not meet or overcome the contentions of petitioner and the authorities cited by petitioner in its petition.

However, quite by accident counsel for petitioner has just learned that the Court of Appeals for the Fifth Circuit rendered on February 2, 1956, a decision⁽¹⁾ which is wholly inconsistent with its decision in the present case and which further strongly supports petitioner's position herein.

In the *Gulf Refining Case* the pertinent facts and issues were:

Isaac R. Price, *et al.*, claiming to be the owners of several hundred acres of oil property in Plaquemines Parish, Louisiana,⁽²⁾ filed in the United States District Court for the Eastern District of Louisiana a *petitory action*⁽³⁾ against Gulf Refining Company, the oil, gas, and mineral lessee in possession of the property under lease from the State of Louisiana. The chief defense, or as the Court below expressed it, "the most serious issue", in the *Gulf Refining Case*, was whether or not the State of Lou-

(1) *Gulf Refining Company v. Isaac R. Price, et al.*, No. 15,622, decided February 2, 1956, printed in Appendix "A" hereto, *infra*, p. 8, *et seq.*, and referred to herein, for brevity, as "Gulf Refining" Case.

(2) By coincidence the property involved in the present matter is also located in Plaquemines Parish. There is no connection whatsoever, however, between the present litigation and the *Gulf Refining Case*.

(3) This is precisely the same type of action which was filed by petitioner in the State District Court, and which now is temporarily enjoined by the United States.

isiana, Gulf's mineral lessor, was an indispensable party to the petitory action brought by the Price group asserting title to the property.

The Court below in the *Gulf Refining Case* rejected Gulf's said defense, and held that Isaac R. Price, *et al.*, were entitled to proceed to judgment against Gulf to secure a decree recognizing the Price title as against the mineral lessee in possession under a mineral lease from the State of Louisiana.

In doing so the Court of Appeals relied on the same authority⁽⁴⁾ and the same reasons which were relied upon by petitioner in the now enjoined and pending State Court case, as will be seen by the opinion of State District Judge Bruce Nunez upholding his jurisdiction prior to the time petitioner was restrained from proceeding further in the State Court, (R. 27-32, and especially at page 29).

Therefore, the Court below has now definitely sanctioned the bringing and prosecution of a petitory action by a title claimant against a defendant mineral lessee in possession where the lessor is the sovereign.

⁽⁴⁾*Dreux, et al., v. Kennedy, et al.*, 12 Robinson (La. Reps.) 489, 504. This is the leading Louisiana case authorizing a petitory action to be filed and prosecuted against a person (such as a mineral lessee) holding under a lease or other color of right from the sovereign. It is noteworthy that in *Dreux v. Kennedy* that the alleged owner of the property—just as here—was the United States. There is obviously no distinction that can be drawn from the circumstance that in the *Gulf Refining Case* the lessor-sovereign was the State of Louisiana, and that in the present case the United States is the lessor, and indeed the Court of Appeals in the *Gulf Refining Case* rightly saw the problem as identical no matter which of the two sovereigns was involved.

An inevitable consequence of this holding is that the Fifth Circuit Court of Appeals has *now* held that the State District Court in and for Plaquemines Parish, Louisiana, is a Court of competent jurisdiction to hear, try and determine the presently enjoined State Court action; and it further follows that, contrary to what the Court of Appeals has previously stated in the decision complained of by petitioner, the Court below has *now* held that the United States is *not* an indispensable party to petitioner's petitory action in the State Court.⁽⁵⁾

It is accordingly submitted that the decision complained of by petitioner in the present matter and the decision of the same Court in the *Gulf Refining Case* are diametrically opposed; and the existence of these two directly conflicting decisions from the same Court below is an additional reason why the present petition for certiorari should be granted.

2. Although it would appear self-evident, it is further submitted that the brief for the United States filed in opposition to the present petition fails fairly to meet the arguments of petitioner.

Inter alia, counsel for the United States declare, in substance, (pages 6-7 and 10 of the brief of the United States in opposition) that petitioner does not question or seriously "attempt to meet" the propositions (1) that the United States is an indispensable party to the State Court title suit; and (2) that the Federal District Court has exclusive jurisdiction of this title action by the

⁽⁵⁾The *Gulf Refining Case* was decided by a panel composed of Circuit Judges Borah and Jones, and Dawkins, (Sr.), District Judge. Circuit Judge Borah was the organ of the Court below in the opinion now sought by petitioner to be reviewed.

United States. These statements in the brief in opposition are factually inaccurate and are legally incorrect. Petitioner, on page 10 of its petition directly challenged the holding of the Court of Appeals that the District Court has exclusive jurisdiction to determine the title of the United States by pointing to the express contrary holding of this Court in the *Bank of New York & Trust Co. Case* (296 U. S. 479, 80 L. Ed. 339).

And petitioner has at all times contended that the State Court suit now enjoined was entitled to proceed even if the United States did not elect to intervene as a party plaintiff, the position of petitioner being that the United States is not an indispensable party to the State Court suit under the settled State and Federal jurisprudence, of which the decision of February 2, 1956, handed down by the Court below in the *Gulf Refining Case*, is now an additional and conspicuous example.

3. Again, it is noted that in footnote 1 of page 8 of the brief in opposition, counsel for the United States declare that "There may also be constitutional questions in regard to the validity and effect of the Louisiana statute."⁽⁶⁾

As we have already argued (pp. 13-15, petition for certiorari), it is just such constitutional questions that this Court has repeatedly held that it will not reach for at this juncture, so as to avoid a premature decision of, "or preliminary guesses" regarding, local law.

⁽⁶⁾ Act 315 of the Legislature of Louisiana for the year 1940, now Louisiana Revised Statutes 9:5805, printed in Appendix "A", p. 18, in the present petition for certiorari.

4. It should further be noted that the following statement in the brief in opposition, on page 12, that

"Furthermore, the rights of the defendants in the state court suit, who are the Government's lessees, depend on the Government's title, and the Government could not be properly considered as a plaintiff",

is completely at variance with Louisiana law, as well as the *Bank of New York & Trust Co. Case, supra*.

As petitioner perhaps insufficiently pointed out in its petition, under Article 392 of the Louisiana Code of Practice, an intervener is "considered as plaintiff"; and under the controlling state jurisprudence, as exemplified by the latest case of the Louisiana Supreme Court,⁽⁷⁾ an intervener does not become a defendant by intervening, nor does he thereby lose his identity in that of the original defendants. Said the Court in the case cited in Footnote 7:

"It follows that while an intervener is considered as plaintiff, insofar as he must follow the jurisdiction of the defendant, he is, nevertheless a plaintiff in intervention who fights for his own hand; that is, he does not lose his identity in that of the original plaintiff, neither does he lose such identity in that of the original defendants."

If the United States should choose not to intervene as an "actor—voluntarily asserting what it deemed to be its rights—" in the presently enjoined State Court suit, the State Court in and for Plaquemines Parish has and had

(7) *State, ex rel. Pope v. Bunkie Coca-Cola Bottling Co.*, 222 La. 603, 63 So. (2d) 13, 14 (1953).

jurisdiction of the petitory action brought by petitioner against the mineral lessee and its sublessee, The California Company. State District Judge Nunez has already properly so held, and the Court below has now confirmed the validity of Judge Nunez's decision.

CONCLUSION.

For the reasons set forth in the petition already filed and in this reply or supplemental brief, the petition should be granted.

Respectfully submitted,

VANCE PLAUCHE,
SAMUEL W. PLAUCHE, JR.,
Counsel for Petitioner.

APPENDIX "A"**IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 15,622

GULF REFINING COMPANY,**Appellant,***versus***ISAAC R. PRICE, ET AL.,****Appellees.**

**Appeal from the United States District Court for the
Eastern District of Louisiana.**

(February 2, 1956.)

**Before BORAH and JONES, Circuit Judges, and
DAWKINS, SR., District Judge.**

DAWKINS, District Judge: Appellees, plaintiffs below, some fourteen in number alleging themselves to be residents of Louisiana, Illinois, Iowa and California brought this petitory action claiming title to several hundred

acres of property,⁽¹⁾ in the Parish of Plaquemines, Louisiana, against Gulf Refining Company, appellant, a Delaware Corporation called Gulf. They alleged actual possession by defendant for more than one year, as required by the provisions of the Louisiana Code of Practice dealing with real actions (Articles 5 and 43) and that the value of the property in controversy exceeded the minimum jurisdiction of the court. Their claim of ownership was as "x x x sole and only heirs" of John Beckwith to whom plaintiffs alleged the State had issued patent No. 1965 on November 4, 1874, covering a larger area of several thousand acres belonging to the State at that time by virtue of its inherent sovereignty when admitted to the Union in 1812. The complaint was filed June 17, 1954.

On July 9th following, defendant, appellant, answered denying for want of information, the citizenship of plaintiffs, but admitting it was a corporation under the laws of Delaware. It also denied the value of the property was within the Court's jurisdiction. It responded to other articles of the complaint as follows: That Article IV alleging title in plaintiffs through the patent to Beckwith, duly recorded in the conveyance records, stated only a conclusion of law, which defendant would neither admit

(1) "Lot 1 of Section 1, Lot 1 of Section 2, Lot 1 of Section 3, Lot or Section 5, Lot 1 of Section 6, Lot 1 of Section 7 and Lot 1 of Section 8, all of Sections 14 and 15, Lots 2, 3, and 4 of Section 17, South Half of Section 18, all of Sections 19, 20, 21, 22, 23, 24 and 25, North Half of North Half of Section 26, Northwest Quarter of Northeast Quarter, Northwest Quarter of Southwest Quarter and Northwest Quarter of Section 27, all of Sections 28, 29, 30 and 32, Northwest Quarter of Northeast Quarter, Northwest Quarter of Southwest Quarter and Northwest Quarter of Section 33 in Township 19 South, Range 18 East in the Southeastern Land District of Louisiana, east of the Mississippi River."

nor deny. It then admitted Articles V through XII, wherein plaintiffs' relation to an acquisition under the Beckwith patent, as well as other alleged transfers were recited, but denied possession in itself of the property as charged in Article XIII and XIV. Defendant then set forth at length its reasons for denial of possession⁽²⁾ based mainly upon its alleged release of all rights which it had formerly held in Sections 22 and 27 as lessee.

Defendant further denied "it has at any time been in *illegal* possession of any portion of. Sections 22 and 27, Township 19 South, Range 18 East, Plaquemines Parish, Louisiana", (Emphasis Added) but admitted,

"x x x it has drilled wells in search of oil on said sections, which wells had been abandoned

(2) "XIII. The allegations contained in Article XIII of plaintiffs' petition are denied and in this connection defendant shows that it is not in actual physical possession of any portion of Sections 22 and 27, of Township 19 South, Range 18 East, Plaquemines Parish, Louisiana; that it acquired a mineral lease designated as State Lease No. 195 from Southern Sulphur Corporation by instrument dated September 18, 1936, a certified copy of which instrument is attached hereto and marked 'Defendant-1', which instrument conveys the rights of Southern Sulphur Corporation in Sections 22 and 27 aforesaid, among other property: that the successors in interest to Southern Sulphur Corporation are Mrs. Bessie Franzheim, et al., being the transferees in instrument dated November 17, 1953, certified copy of which is attached hereto and marked 'Defendant-2'; that pursuant to the provisions contained in the instrument hereinabove designated as 'Defendant-1' and particularly paragraph VI thereof, defendant has executed a reconveyance of all rights acquired by it under said instrument to the successors in interest of Southern Sulphur Corporation, as they appear from the instrument herein described as 'Defendant-2' and the heirs, successors and assigns of such parties, as more fully appears from instrument dated July 6, 1954, a certified copy of which is attached hereto and marked 'Defendant-3', such reconveyance being limited to the rights acquired by this defendant as aforesaid in Sections 22 and 27 of Township 19 South, Range 18 East, Plaquemines Parish, Louisiana." (Emphasis Supplied).

long prior to the filing of this action, and defendant has exercised no possession over said property since such abandonment." It also averred "*x x x It is not in possession of any portions of Sections 22 and 27, Township 19 South, Range 18 East, Plaquemines Parish, Louisiana, and that it has no interest in said property and is not claiming possession thereof or any interest thereon; and defendant formally disclaims any right to possession of said property or any interest therein.*" (Emphasis Supplied).

Copies of "Defendant-1", "Defendant-2" and "Defendant-3" referred to in answer to Article XIII of the Complaint (Footnote #2) were attached and constitute a considerable portion of the transcript in this case.

On August 24, 1954, plaintiffs moved for summary judgment, contending there was "no genuine issue as to any material fact, all as shown by affidavits and documents hereto attached" and prayed for judgment as demanded in its original complaint. This was followed on August 31st by complainants' motion "for leave to file documents in support of motion for summary judgment," which included among others, a certified copy of patent No. 1965 to John Beckwith covering property in Township 19 South, Range 18 East in Plaquemines Parish, a copy of plat of said township by L. N. Polk, Engineer and copy of plat of the same township by J. C. DeArmas, embracing the property sued for and other documents.

Thereafter, on September 8, 1954, Defendant moved to dismiss the motion for summary judgment, again aver-

ring as in its answer of July 9 that "x x x x such possession as defendant has had of the property in controversy has been in the capacity of lessee, and defendant in its said answer has further disclosed the name and identity of its lessor, which the state law requires complainants to make parties to this case or that the suit should be dismissed." On September 14th defendant also filed opposition to the motion for summary judgment for the reason (1) there was no jurisdiction of the subject matter, the value of the property involved not exceeding the sum of \$3,000, (2) the affidavits and documents tendered by plaintiffs "were irrelevant and immaterial to any issue in the case x x x", (3) the record "affirmatively shows an indispensable party has not been brought into the action", (4) the record does not "disclose a justiciable controversy as to the ownership of the property", and (5) for these reasons "a motion for summary judgment is not authorized by Rule 56 of the Rules of Civil Procedure."

On the same day, September 14th, plaintiffs filed a motion to amend the complaint "in order to more fully show diversity of citizenship between all plaintiffs and defendant" as a basis for jurisdiction, disclosing that plaintiffs were citizens of Louisiana, Massachusetts, Illinois, Iowa and California, while defendant is a corporation under the laws of Delaware.

In this state of the pleadings, the motion for summary judgment was heard September 15, 1954/ complainants offering the documents attached to their motion and calling attention to the various allegations in the complaint and answer, including especially the copy of the release

and reconveyance by defendant to its lessor, Southern Sulphur Corporation, and the latter's stockholders, executed July 8, 1954, the day preceding the filing of the answer. The matter was discussed at some length both by opposing counsel and the Court, was taken under advisement by the judge below and, on March 28, 1955, without opinion, he gave judgment in favor of plaintiffs, recognizing them "x x x to be the owners of the lands described in plaintiffs' complaint and removing and annulling, *as against defendant* Gulf Refining Company, any claim or pretensions in and to any portion of said lands adverse to plaintiffs' title." (Emphasis Supplied).

Defendant appealed and charges the following errors by the Court below:

- (1) Holding that the subject matter in controversy exceeded \$3,000.00;
- (2) Holding that defendant's lessor was not an indispensable party and failing to sustain defendant's Motion to Dismiss;
- (3) Holding that there was no genuine issue as to any material facts;
- (4) Holding that the record disclosed a justiciable controversy of which the Court could or should take cognizance; and
- (5) Holding that plaintiffs proved their ownership to the property described in the petition, and failing to hold that the proof showed the ownership of the property to be vested in the State of Louisiana.

ALLEGED ERROR NO. 1.

The complainant alleged a value exceeding \$3,000, and supported it by affidavits and other documentary evidence, all of which were filed at the trial of the Motion for summary judgment under express order of the Court. Defendant offered no evidence, although the documents referred to and attached to its answer and motions were a part of the pleadings. The lands claimed by plaintiffs consisted mainly of water bottoms or submerged property, as to the value of which there was no other proof than that offered by plaintiffs. Defendant admitted it had drilled wells and removed oil from Sections 22 and 27 among other lands claimed by complainants, and that its derricks with placards thereon proclaiming its ownership, were still standing on the property in dispute at the time of trial. It was also made clear that defendant's attempted release back to its alleged lessors of the lands in Section 22 and 27, was executed between the time the complaint was filed on June 17, 1954, and the filing of the answer denying possession by defendant on July 9th. In this state of the record it can scarcely be contended that, if the amount in controversy was sufficient to give the Court jurisdiction when the suit was filed, it was lost by the subsequent attempt of defendant to divest itself of interest in a part of the property. Hence we hold that the Court below was correct in overruling the plea to the jurisdiction of the subject matter.

ALLEGED ERROR NO. 2.

This alleged error raises the most serious issue in the case, i. e., was the original lessor, the State, an indispensable party to this action involving the title of the land?

At the threshold the Court below found, according to the pleadings and "Defendant-3" referred to in the answer to Article XIII of the complaint (Footnote No. 2), defendant had divested itself of all claims and interest in Sections 22 and 27, immediately before answering as to which it claimed and could claim nothing, not even lawful possession.

Appellees concede that a petitory action must be brought by one out of possession against the actual possessor, if it has continued for more than one year, and that if such possession be as lessee, ordinarily he can relieve himself from further defending the title by revealing the name and address of his lessor (Art. 43, La. Code of Practice), but, in the present case, they contend Gulf lost that right by releasing and reconveying the leasehold to its lessors or assignors, who, themselves were only lessees. In this situation appellees say the Court had no alternative but to recognize their title, which on its face (a patent from the State) was good against defendant. They further concede the judgment below is binding only against Gulf, and that neither the State nor anyone else not parties to this suit, are deprived of the right to sue appellees in a direct action to test their claims to the property.

It will be noted by reference to "Defendant-1", attached to appellant's answer, the original assignment or sublease by Southern Sulphur Corporation to Gulf, dated September 18, 1936 embraced large areas in Plaquemines, LaFourche and Jefferson Parishes, which included lands claimed by plaintiffs other than Sections 22 and 27, Township 19 South, Range 18 East, Plaquemines Parish, Louisiana. No explanation is given for the release of these

two sections, from which appellees' counsel, in oral argument, charged without denial, Gulf had withdrawn many thousands of dollars worth of oil.

As stated earlier, the State, if it has any rights, has lost nothing and if it sees fit to sue the plaintiffs in this case for recovery of the property involved, issue can be joined and determined in a manner that will be binding upon all concerned.

In *California Company v. Price, et al.*, 225 La. 706, 74 So. 1, wherein these same appellees in a case to which the State was a party, were held to be the owners of *other portions of the lands covered by the patent to Beckwith of 1874*. In that case, the Supreme Court of Louisiana held the State was barred from attacking the patent by Act 62 of 1912 (L. S. A.-R. S. 9:5661, et seq.) which it declared to be a statute of repose against all persons, including the State. Of course, that was a concursus proceeding between the State, the present appellees and others, but in order to find for these heirs of Beckwith it held the patent immune to attack by prescription of six years by the State under this statute.

In the present case, the defendant knew, of course, appellees could not make the State a party to any suit without its consent, and could never quiet their title against the sovereign as long as it claimed ownership of the fee and declined to submit itself to the jurisdiction of the Courts. They also knew that the State was prohibited from divesting itself of the fee to the beds of streams and other navigable bodies of water by the Constitution of 1921 (Art. VI, Section 2), adopted after the issuance

of the Beckwith patent in 1874. Most of the cases cited by appellant, wherein it was held that the claimant of the fee was an indispensable party, were between private litigants and did not present the impossible situation with which appellees are confronted here. As pointed out in those cases the basic reason for declining to determine title against an absent claimant, is that it would open the door for fraud between lessees or other possessors holding under the true owner, and third persons. Here, however, if the contentions of the appellant were sustained, in the state of this record, a greater injustice might result. If the State should refuse to raise the question of its title in a proper action, we know of no way in which appellees could find relief, except by proving a valid title based upon a patent, against those in possession under the lease from the State with only a color of right, treating them as trespassers, as has been done in other instances where the sovereign declined to become a party. If such relief were not available, the true owner might be compelled to stand by and see his property denuded of large values of oil, timber, etc., without recourse, which would amount to a taking of his property by the State, not for a public purpose for which it would have to pay under both the State and Federal Constitutions, but for purely private profit.

In *Dreux, et al., v. Kennedy, et al.*, 12 Robinson (La. Rep.) 489, 504, the legal complications were substantially the same as here, except there The United States was the alleged owner, who could not be sued without its consent yet the persons sued contended it was an indispensable party. The case was for this reason dismissed below, but on appeal that judgment was reversed, and Justice Bullard, as the organ of the Court made a care-

ful analysis of the circumstances, as well as the origin and history of title actions. The property in dispute was, at the filing of the complaint, in possession of agents of the United States as a branch mint. Plaintiffs claimed prior title under their ancestors and brought the suit, against the officers or employees in actual possession, under a donation from the City of New Orleans made in 1835, approximately ten years before the action was commenced. The defendants' motion to dismiss alleged that having revealed the United States as the owner as required by Art. 43 of The Code of Practice, and it being impossible for plaintiffs to implead the Government, the trial court could do nothing but dismiss the suit. In disposing of that contention, the Supreme Court of Louisiana (Pages 501, 503) said:

"It is quite clear, that the United States cannot be sued in any court as a party defendant on the record; but it appears settled that in the other States, actions may be brought and maintained against public officers, when the government alone is a party in interest; and this is particularly the case in actions of ejectment. In the opinion of the Supreme Court of the United States in the case of *Wilcox v. Jackson*, to which we shall have occasion to recur again for a different purpose, it is said by Mr. Justice Barbour:

'This then being the case, and this suit having been in effect against the United States, to hold that the party could recover as to them, would be to hold that a party having an inchoate and imperfect title, could recover against one in whom resided the perfect title.'

Thus the decision of that case, which was an ejectment against an officer of the army holding under the United States, turned upon this distinction; that although by the law of Illinois a certificate of purchase and a patent certificate, without a patent, (inchoate titles,) were sufficient to maintain an action of ejectment in relation to lands severed from the domain, and in ordinary cases, yet when the action is against one holding under the United States, and the government is substantially a party in interest, *a recovery could not be had without a patent; and the plaintiffs failed because no patent had ever issued, and the legal title was in the United States.* In that case the judgment in the State court was for the plaintiffs, and the United States, regarding their officer as a mere nominal party, prosecuted the writ of error themselves. No question was made as to the form of the action. The court held that:

'Whenever the question in any court, State or Federal, is whether a title to land which had been once the property of the United States has passed, that question must be solved by the laws of the United States; but that whenever, according to those laws, the title shall have passed, then that property, like all other property in the State is subject to State legislation; so far as that legislation is consistent with the admission that the title passed and vested according to the laws of the United States.' 13 Peters, 498 [10 L. Ed. 264].

The rule which governs actions of ejectment at common law appears to be, that after service

of the ejectment, which is upon the tenant in possession, the defendant should, in case he means to defend the title, appear and confess lease, entry and ouster, which brings the title only into issue. Where the tenant has not given notice to his landlord, which he is bound to do in England under severe penalties, and there is judgment against the casual ejector, the court will set aside the judgment on the landlord's entering into the usual rule to try the title; or the landlord may bring a writ of error, which will be a supersedeas of the proceedings. *Espinasse's Nisi Prius*, 443.

That the jurisdiction of a State is coextensive with its territory and its legislation, except where it has consented to part with any portion of it under the constitution of the United States, is a proposition which cannot be combated. It applies to every portion of its soil, which has been severed from the public domain. [*People v. Godfrey*] 17 Johnson [N. Y.] 233. *Sergeants' Constitutional Law*, 266 [*Wilcox v. Jackson*] 13 Peters, loco citato. [498, 10 L. Ed. 264]; [*United States v. Cornell*] 2 Mason, 60 [Fed. Cas. No. 14,867].

In the case of an illegal taking of property by an officer acting under the authority of the United States, and for the use and benefit of the government, we do not doubt but that an action would lie against the officer, or agent, of the United States, although the party in interest would be the United States. In such cases jurisdiction is neither given nor ousted by the parties concerned in in-

terest, but by the relative situation of the parties named on the record.

'If,' says the court in *Osborn v. The Bank of the United States*:

'The person who is the real principal, the person who is the real source of the mischief, by whose power and for whose advantage it is done, be himself above the law, be exempt from all judicial process, it would be subversive of the best established principles to say, that the law could not afford the same remedies against the agents employed in doing the wrong which they would afford against him, could his principal be joined in the suit.' 9 Wheaton, 738 [6 L. Ed. 204].

In the case of United States, ex rel. Stokes, et al., v. Kendall [Fed. Cas. No. 15,517] that officer had no personal interest in the matter, and the amount to be allowed was to be paid out of the treasury of the United States.

Upon the whole we conclude, that, if, when the party in possession, who is sued in such an action points out the owner under whom he holds, he is bound to defend the action, if such owner does not live in the State, and is not represented in it; still more should be so, when such proprietor, lessor or principal is the United States, against whom no direct action can be brought. If it were not so, the clearest right might be defeated, and the party suing be without remedy. The court, therefore, in our opinion erred in sustaining the exceptions." (Emphasis Supplied).

Alleged errors Nos. 3, 4 and 5 are more or less covered by what has been said in disposing Nos. 1 and 2 and we do not deem it necessary to discuss them separately. Suffice it to say that as held by the Court below, plaintiffs have proven their title as good against Appellant, and the judgment appealed from is

AFFIRMED.

A True Copy:

Teste:

[Seal]

/s/ **JOHN A. FEEHAN, JR.,**
Clerk of the United States Court of
Appeals for the Fifth Circuit.

SEP 4 1956

JOHN T. FEY, Clerk

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 26

THE LEITER MINERALS, INC.,

Petitioner,

versus

UNITED STATES OF AMERICA, ET AL.,

Respondents.

**On Writ of Certiorari to the United States Court of
Appeals for the Fifth Circuit.**

BRIEF FOR THE PETITIONER.

SAMUEL W. PLAUCHÉ, JR.,

ANDREW LANE PLAUCHÉ,

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INDEX

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2-3
STATUTES INVOLVED	3
STATEMENT	5
SUMMARY OF ARGUMENT	9
ARGUMENT:	
I. 28 U. S. C. 2283 Is Applicable to the United States and Prohibits the Injunction Issued in this Case	12
II. The Pending and Presently Enjoined Suit in the Louisiana State Court Is an In Rem, or Quasi In Rem, Action, and the Present Suit Which Was Subsequently Filed in the United States District Court Is of the Same Nature. Therefore, the Present Action, Which Was Subsequently Filed, Must Be Dismissed or Abated, or, At Least, Stayed, Under the Established Jurisprudence	21
III. In any Event the Court Should Grant Petitioner's Alternative Motion to Stay Based on the "Doctrine of Abstention"	35
CONCLUSION	44
Appendix A—Act 315 of the Legislature of Louisiana for the Year 1940	45
Appendix B—Mineral Reservation in Deed from Thomas Leiter to United States, Dated December 21, 1938	46

CITATIONS

Page

Cases:

Albertson v. Millard, 345 U. S. 242, 97 L. Ed. 983 (1953)	36
Amalgamated C. W. of America v. Richman Bros., 348 U. S. 511, 99 L. Ed. 600 (1955)	3, 9, 10, 12, 13, 14, 15, 16, 26, 33
American Federation of Labor v. Watson, 327 U. S. 582, 90 L. Ed. 873 (1946)	36
Ames v. Kansas, 111 U. S. 449, 28 L. Ed. 482 (1884)	25
Arkansas v. Texas, 346 U. S. 368, 98 L. Ed. 80 (1953)	36
Barnett v. Mayes, 43 F. (2d) 521 (C. C. A., 10th, 1930)	22
Borup v. National Airlines, 117 F. Supp. 475 (D. C., N. Y., 1954)	39
Bowles v. Willingham, 321 U. S. 503, 88 L. Ed. 892 (1944)	16
Brown v. Wright, 137 F. (2d) 484 (C. A., 4th, 1943)	13
Buck v. Colbath, 3 Wall. 334, 18 L. Ed. 257. (1866)	22
Byers v. McAuley, 149 U. S. 608, 37 L. Ed. 867 (1893)	22
Capital Service v. N. L. R. B., 347 U. S. 501, 98 L. Ed. 887 (1954)	16
Carr v. United States, 8 Otto 433, 25 L. Ed. 209 (1879)	27

Cases—(Continued) :

	Page
Carter v. United States, ____ U. S. ____, 100 L. Ed. ____ (Adv. pp. 35, 36)	14
Chicago v. Fieldcrest Dairies, 316 U. S. 168, 86 L. Ed. 1355 (1942)	36
Cotton v. United States, 11 How. 229, 13 L. Ed. 675 (1850)	25, 26
Cottell v. Heyman, 111 U. S. 176, 28 L. Ed. 390 (1884)	22, 34
Deckert v. Independence Shares Corp., 311 U. S. 282, 85 L. Ed. 189 (1940)	8
Dreux v. Kennedy, 12 Rob. 489 (1846)	30, 32
Emil v. Hanley, 130 F. (2d) 369 (C. C. A., 2nd, 1942)	23
Farmers' Loan & T. Co. v. Lake Street Elevated R. Co., 177 U. S. 51, 44 L. Ed. 667 (1900) ..	23
Ferriday v. Middlesex Banking Co., 118 La. 770, 43 So. 403 (1907)	22
Fleming v. Rhodes, 331 U. S. 100, 91 L. Ed. 1368 (1947)	16
Franz v. Franz, 15 F. (2d) 797 (C. C. A., 8th, 1926)	22
Frost-Johnson Lumber Co. v. Salling's Heirs, et al., 150 La. 756, 91 So. 207 (1922)	5
Gulf Refining Co. v. Price, 232 F. (2d) 25 ^e (C. A., 5th, 1956)	31, 32
Hagan v. Lucas, 10 Pet. 400, 9 L. Ed. 470 (1836) ..	10, 21

Cases—(Continued):

	Page
Hart v. United States, 207 F. (2d) 813 (C. A., 8th, 1953)	30
Heidritter v. Oil Cloth Company, 112 U. S. 294, 28 L. Ed. 729 (1884)	22
Hillsborough Township v. Cromwell, 326 U. S. 620, 90 L. Ed. 358 (1946)	11, 36
Hutchinson Investment Co. v. Caldwell, 152 U. S. 65, 38 L. Ed. 356 (1894)	42
Kennecott Copper Corp. v. State Tax Com., 327 U. S. 573, 90 L. Ed. 862 (1946)	36
Land v. Dollar, 330 U. S. 731, 91 L. Ed. 1209 (1947)	31, 38
Larson v. Domestic & Foreign Commerce Corp., 337 U. S. 682, 93 L. Ed. 1628 (1949)	27
Lion Bonding & S. Co. v. Karatz, 262 U. S. 77, 67 L. Ed. 871 (1923)	10, 22, 23
Louisiana v. Garfield, 211 U. S. 70, 53 L. Ed. 92 (1908)	27
Merryweather v. United States, 12 F. (2d) 407 (C. A., 9th, 1926)	25, 29
Mine Safety Appliances Co. v. Forrestal, 326 U. S. 371, 90 L. Ed. 140 (1945)	27
Minnesota v. United States, 305 U. S. 382, 83 L. Ed. 235 (1939)	27
New York v. New Jersey, 256 U. S. 296, 65 L. Ed. 937 (1921)	29
Nongard v. Burlington County Bridge Com'n., 229 F. (2d) 622 (C. A., 3rd, 1956)	16

Cases—(Continued) :

	Page
Orton v. Smith, 18 How. 263, 15 L. Ed. 393 (1856)	21, 22
Palmer v. Texas, 212 U. S. 118, 53 L. Ed. 435 (1909)	22
Penn General Casualty Co. v. Pennsylvania, 294 U. S. 189, 79 L. Ed. 850 (1935)	22
People's Trust Co. v. United States, 23 F. (2d) 381 (C. C. A., 1st, 1928)	25
Plaquemines Tropical Fruit Co. v. Henderson, 170 U. S. 511, 42 L. Ed. 1126 (1898)	25
Ponzi v. Fessenden, 258 U. S. 254, 66 L. Ed. 607 (1922)	29
Porter v. Dicken, 328 U. S. 252, 90 L. Ed. 1203 (1946)	16
Porter v. Lee, 328 U. S. 246, 90 L. Ed. 1199 (1946)	16
Princess Lida v. Thompson, 305 U. S. 456, 83 L. Ed. 285 (1939)	23
Railroad Commission of Texas v. Pullman Co., 312 U. S. 496, 85 L. Ed. 971 (1941)	11, 35
Ray v. Liberty Industrial Life Ins. Co., (La. App., 1938), 180 So. 855	39
Reconstruction Fin. Corp. v. United Distill. Prod. Corp., 229 F. (2d) 665 (2nd Cir., 1956)	41
Richardson v. Liberty Oil Co., 143 La. 130, 78 So. 326 (writ of error dismissed, 250 U. S. 648, 63 L. Ed. 1188, 1919)	30

Cases—(Continued):

	Page
Robb v. Connolly, 111 U. S. 624, 28 L. Ed. 542 (1884)	25
Shaw v. Watson, 151 La. 893, 92 So. 375 (1922)	5
Spector Motor Service v. McLaughlin, 323 U. S. 101, 89 L. Ed. 101 (1944)	36
Stanley v. Schwalby, 162 U. S. 255, 40 L. Ed. 960 (1896)	27, 31
State, ex rel. Brenner v. Noe, 186 La. 102, 171 So. 708 (1936)	30
State, ex rel. Pope v. Bunkie Coca-Cola Bottling Co., 222 La. 603, 63 So. (2d) 13 (1953)	11, 28
Sunderland v. United States, 266 U. S. 226, 69 L. Ed. 259 (1924)	42
Taylor v. Carryl, 20 How. 583, 15 L. Ed. 1028 (1858)	22
Thompson v. Magnolia Petroleum Co., 309 U. S. 478, 84 L. Ed. 876 (1940)	36
Tindal v. Wesley, 167 U. S. 204, 42 L. Ed. 137 (1897)	30
Toucey v. New York Life Ins. Co., 314 U. S. 118, 86 L. Ed. 100 (1941)	9, 10, 15, 21, 22
United States v. Babcock, 6 F. (2d) 160 (D. C., Ind., 1925), affirmed, 9 F. (2d) 905 (C. C. A., 7th, 1925)	13

Cases—(Continued):

	Page
United States v. Bank of New York & Trust Co., 77 F. (2d) 866, 296 U. S. 463, 80 L. Ed. 331 (1936)	10, 22, 23, 24, 25, 27, 28, 29, 38
United States v. Burnison, 339 U. S. 87, 94 L. Ed. 675 (1950)	42
United States v. Cain, 72 F. Supp. 897 (W. D. Mich., 1947)	13
United States v. County of Allegheny, 322 U. S. 174, 88 L. Ed. 1209 (1944)	41
United States v. Dewar, 18 F. Supp. 981 (D. C., Nev., 1937)	13
United States v. Fox, 94 U. S. 315, 24 L. Ed. 192 (1877)	11, 42
United States v. Inaba, 291 Fed. 416 (E. D. Wash., 1923)	13, 18, 27
United States v. Jacobs, 100 F. Supp. 189 (N. D. Ala., S. D., 1951)	25, 29
United States v. Lee, 106 U. S. 196, 27 L. Ed. 171 (1882)	18, 30
United States v. McIntosh, 57 F. (2d) 573 (E. D. Va., 1932)	13
United States v. Nebo Oil Co., 190 F. (2d) 1003 (1951), affirming 90 F. Supp. 73	38
United States v. Parkhurst-Davis Mercantile Co., 176 U. S. 317, 44 L. Ed. 485 (1900)	18

Cases—(Continued) :

	Page
United States v. Perkins, 163 U. S. 625, 41 L. Ed. 287 (1896)	42
United States v. Phillips, 33 F. Supp. 261 (N. D. Okla.; 1940)	13
United States v. Prince William County, 9 F. Supp. 219 (E. D. Va., 1934) affirmed, 79 F. (2d) 1007 (C. A., 4th), cert. den., 297 U. S. 714 (1936)	13
United States v. Shaw, 309 U. S. 495, 84 L. Ed. 888 (1940)	27
United States v. Standard Oil Co., 332 U. S. 301, 91 L. Ed. 2067 (1947)	40
United States v. Taylor's Oak Ridge Corp., 89 F. Supp. 28 (E. D. Tenn., 1950)	13
United States v. United Mine Workers of America, 330 U. S. 258, 91 L. Ed. 884 (1947)	18
United States v. U. S. Fidelity Co., 309 U. S. 506, 84 L. Ed. 894 (1940)	27
United States v. Western Fruit Growers, 34 F. Supp. 794 (D. C., Cal., 1940), affirmed, 124 F. (2d) 381 (C. C. A., 9th, 1941)	13
Wabash R. Co. v. Adelbert College, 208 U. S. 38, 52 L. Ed. 379 (1908)	22
Westfeldt v. North Carolina Mining Co., 166 Fed. 706 (C. C. A., 4th, 1909)	22
Whitney Bank of New Orleans v. Little Creek Oil Co., 212 La. 949, 33 So. (2d) 693 (1947)	38

United States Statutes:**Page**

Act of June 22, 1870, c. 150, Sec. 5, 16 Stat. 162 (5 U. S. C., Sec. 316)	29
Act of June 25, 1948, c. 646, 62 Stat. 928, (Tit. 28, U. S. C., Sec. 1254)	2
Act of June 25, 1948, c. 646, 62 Stat. 929 (Tit. 28, U. S. C., Sec. 1292)	8
Act of June 25, 1948, c. 646, 62 Stat. 930 (Tit. 28, U. S. C., Sec. 1332)	17
Act of June 25, 1948, c. 646, 62 Stat. 931 (Tit. 28, U. S. C., Sec. 1337)	15
Act of June 25, 1948, c. 646, 62 Stat. 933 (Tit. 28, U. S. C., Sec. 1345)	17
Act of June 25, 1948, c. 646, 62 Stat. 968 (Tit. 28, U. S. C., Sec. 2283)	3, 8, 9, 12, 13, 14, 15, 16, 17, 20, 26

Miscellaneous:

Article 43, Louisiana Code of Practice	3, 5
Article 392, Louisiana Code of Practice	4, 28
Article 575, Louisiana Code of Practice	34
Article 577, Louisiana Code of Practice	34
Act 315 of the Legislature of Louisiana for the year 1940 (Louisiana Revised Statutes 9:5806)	4, 11, 37, 45
42 Yale Law Journal, pp. 1169, et seq., Taylor and Willis, "The Power of Federal Courts to En- join Proceedings in State Courts"	15, 18
Gulf Refining Company v. Price, No. 15,622, (C. A., 5th, 1956), Opn., February 2, 1956	31, 32
United States v. Louisiana, No. 15, Original	20
United States Supreme Court Rules, Nos. 18, 27, 51	34

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 26

THE LEITER MINERALS, INC.,

Petitioner,

versus

UNITED STATES OF AMERICA, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of
Appeals for the Fifth Circuit.

BRIEF FOR THE PETITIONER.

OPINIONS BELOW.

The opinion of the District Court (R. 152-163) is reported at 127 F. Supp. 439. The opinion of the Court of Appeals (R. 176-181) is reported at 224 F. (2d) 381.

JURISDICTION.

The judgment of the Court of Appeals was entered on June 30, 1955 (R. 181), and a petition for rehearing was denied on October 14, 1955 (R. 181). The petition for a writ of certiorari was filed January 9, 1956, and was granted February 27, 1956. The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED.

Whether the Federal Court, despite the congressional rule of comity, 28 U. S. C. 2283, which makes no exception in favor of the United States Government, and in direct transgression of the long established judicial rule of comity in such cases, may enjoin a previously filed and pending *in rem* action in a state court of coordinate jurisdiction; or whether, as petitioner contends, the subsequently filed *in rem* action in Federal Court must be dismissed or abated, or at least stayed, pending the determination of the State Court suit.

This question involves consideration of the subsidiary questions of (1) whether the United States District Court has exclusive jurisdiction to determine the title of the United States to real property; or (2) as petitioner contends, whether the United States may be required under the circumstances to intervene as a plaintiff in the previously instituted *in rem* suit pending in the state court.

There is further incidentally involved the question whether the Federal Court, in connection with the *in rem* action subsequently filed there, is authorized to enjoin the previously filed *in rem* state court suit upon making the

claim that the state court is without jurisdiction; or whether, as petitioner contends, such a question is for the state court initially to determine, subject to the power of ultimate review by this Court.

STATUTES INVOLVED.

Title 28, U. S. C., Section 2283 is the present congressional limitation upon the power of the Federal Courts to enjoin State Court proceedings: This Statute reads:

"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments. June 25, 1948, c. 646, 62 Stat. 968."¹

The procedural basis for petitioner's previously filed State Court real action, now temporarily enjoined by the Court below, is Article 43 of the Louisiana Code of Practice, reading as follows:

"43. *Parties defendant—Lessee's duty to declare name of lessor.*—The petitory action, or one by which real property, or any immovable right to such property may be subjected, is claimed, *must be brought* against the person who is in the actual

¹ In footnote 1 in the petition for certiorari filed herein it was acknowledged that the "great weight of lower court authority" was to the effect that the prohibition of Section 2283 did not apply to the United States. This is true, but as we shall point out in this brief, the Lower Court decisions are erroneous when the more recent decisions of this Court (see, e. g., *Amalgamated C. W. of America v. Richman Bros.*, 348 U. S. 511, 99 L. Ed. 600 (1955)) are considered.

possession of the immovable, even if the person having the possession be only the farmer or lessee.

"But if the farmer or lessee of a real estate be sued for that cause of action he must declare to the plaintiff the name, and the residence of his lessor, who shall be made a party to the suit, if he reside in the State, or is represented therein, and who must defend it in the place of the tenant, who shall be discharged from the suit."²

There is also involved Article 392 of the Louisiana Code of Practice, reading as follows:

"392. *Court in which intervention had.*—The plaintiff in intervention must institute his demand before the court in which the principal action has been brought; *being considered as plaintiff*, he must follow the jurisdiction of the defendant."³

Finally, there is indirectly involved consideration of Act 315 of the 1940 Louisiana Legislature (Louisiana Revised Statutes 9:5806), since it is upon this 1940 Louisiana Act that petitioner's claim on the merits to the minerals involved in the two *in rem* suits is based. This 1940 Louisiana Act is printed, *infra*, p. 37 and also in Appendix A, *infra*, p. 45.

² All emphasis by petitioner unless otherwise noted.

³ Article 392, and the settled Louisiana jurisprudence thereunder, constitute one of the bases of petitioner's contention that to require the United States to intervene in the pending and previously filed State Court real action would not make the United States a party defendant, being sued without its consent (See, *infra*, p. 28).

STATEMENT.

Petitioner filed its State Court petitory action (R. 101-111)⁴ in the Twenty-fifth Judicial District Court in and for Plaquemines Parish, Louisiana, on August 13, 1953, asserting title to and the right to possession of the minerals under a large tract of land located in that Parish. The petitory action is one of the recognized types of real action in Louisiana. See *Article 43, Louisiana Code of Practice, supra*, p. 3. It is only the minerals (or mineral rights) under the land in Plaquemines Parish which are involved in the State Court action, as well as in this, the subsequently filed, Federal Court suit. In Louisiana the minerals (or mineral rights) involved in both suits constitute immovable or real property. *Shaw v. Watson*, 151 La. 893, 92 So. 375 (1922). Under Louisiana law oil and gas in place are not subject to ownership, as specific things apart from the soil which they underlie; and since in Louisiana there can be no mineral estate in oil and gas as such, the sale or reservation of minerals is merely a grant or retention of right to go on land for exploration or exploitation of minerals, constituting a real right in the nature of a servitude or easement, which in turn prescribes, or expires by limitation, in ten years if not used.⁵

⁴ The Litter Minerals, Inc., v. The California Company, et al., No. 3282, Plaquemines Parish, Louisiana.

⁵ This has been the settled law of Louisiana since the 1922 decision of *Frost-Johnson Lumber Co. v. Salling's Heirs, et al.*, 150 La. 756, 91 So. 207. On the merits of the present title controversy, in both the State and Federal Court cases, the fundamental question involved is whether the 1938 mineral reservation in the sale to the United States by petitioner's predecessor in title was made "imprescriptible" by Louisiana Act 315 of 1940 (printed p. 37, *infra*, and also in Appendix A, *infra*, p. 45).

Petitioner's State Court action, as *expressly required* by the Louisiana Code of Practice, was brought against The California Company, the operator under sub-leases from Allen J. Lobrano, and against Lobrano as holder of leases granted to him by the United States. The State Court action was properly brought against these parties, as the State Judge, District Judge Bruce Nunez, ultimately held prior to the time that petitioner was restrained from proceeding in the State Court suit. (See decision of Judge Nunez, R. 145-149, and authorities therein cited).

After an unsuccessful attempt⁶ had been made by The California Company and Lobrano to remove petitioner's State Court action to the United States District Court for the Eastern District of Louisiana, they filed various exceptions (R. 143-144), challenging the jurisdiction of the Plaquemines Parish Court; further urging that there was the absence of an indispensable party in the State Court action (viz., the United States); and finally pleading that the State Court petition disclosed no cause or right of action (which last exceptions in Louisiana are similar to a general demurrer).

In due course all of the exceptions in the State Court suit were presented to the State District Court on oral argument and briefs, and on March 23, 1954, Judge Nunez overruled all of the exceptions, handing down written reasons (R. 145-149).

⁶ In ordering the action remanded to the State Court District Judge J. Skelly Wright noted: "A federal question may be 'lurking in the background' in this case, but its presence is not sufficiently disclosed by plaintiff's petition, nor is the question, if present, a substantial one."

On March 17, 1954, shortly before the State District Judge ruled upon the exceptions filed in the State Court proceeding, the present action (R. 1-20) was commenced by the United States in the Federal Court for the Eastern District of Louisiana. The present action, which is one to quiet the title of the United States to the same mineral rights which are made the subject of the suit in the State Court, was, therefore, filed over seven months after the commencement of the State Court suit, and after issue had been joined by the defendants in the State Court.

Coupled with the prayer of the United States in the present action to have its title quieted, and to have the alleged "clouds" upon its alleged title cancelled and removed, is the prayer that petitioner be enjoined from claiming any further interest in the property, and particularly that petitioner be enjoined from prosecuting the State Court suit (R. 16-17). On April 3rd, 1954, the United States filed a motion for a temporary restraining order to restrain petitioner from prosecuting the State Court action (R. 18-20), which restraining order had been granted by the District Judge the previous day (R. 22, 23).

The complaint in the Federal Court suit was met by petitioner's motion to dismiss or abate, or, alternatively, for a stay of, the subsequently filed Federal action (R. 25, 26). Petitioner's motion was based upon the pendency of the petitory action previously brought by petitioner in the Louisiana State Court, and upon the familiar rule that where two actions are pending in courts of co-

ordinate jurisdictions, and where the two actions are *in rem*, or *quasi in rem*, the Court which is subsequently resorted to is disabled from exercising any power over the property in litigation, or from interfering with the already pending litigation itself. Alternatively, petitioner's motion was to stay the Federal Court suit for the additional reason that the State Court litigation involved questions of State law which should be first determined by the State Courts, in that the said determination would provide a rule of decision in the Federal Court and further might render a decision of Federal constitutional questions unnecessary. Petitioner's motion concluded (R. 26) by moving for the dissolution of the restraining order and for a denial of the requested preliminary injunction for the additional reason that such injunctive relief must be denied plaintiff under the provisions of Title 28 U. S. C. A., Section 2283.

The District Court overruled petitioner's motions (R. 152-163), and proceeded at the same time to enter the temporary injunction prayed for by the United States; and on petitioner's appeal⁷ the Court of Appeals for the Fifth Circuit affirmed (R. 176-180).

⁷ Although the right of appeal from the District Court's interlocutory order of injunction is expressly conferred by Title 28, U. S. C. 1292, only in respect of the injunctive feature of the order, the appellate jurisdiction also embraces that portion of the order which overruled petitioner's motion to dismiss or abate, inasmuch as the said motion is basic to and underlies the injunctive order itself. *Deckert v. Independence Shares Corp.*, 311 U. S. 282, 85 L. Ed. 189 (1940).

SUMMARY OF ARGUMENT.

I. The injunction issued by the Court below against petitioner's pending State Court *in rem* suit is prohibited by the anti-injunction statute, 28 U. S. C. 2283. No exception in favor of the United States is included in Section 2283 and there exists in its favor no other congressional exception to the clear-cut ban on Federal injunctions against State Court proceedings. No judicial departure from the anti-injunction statute is countenanced. *Toucey v. New York Life Ins. Co.*, 314 U. S. 118. Even where the Federal Court complaint for injunctive relief alleges utter want of jurisdiction in the State Court sought to be enjoined, the anti-injunction statute prohibits enjoining the State proceeding. *Amalgamated C. W. of A. v. Richman Bros.*, 348 U. S. 511. The present injunction cannot be justified on the ground that it is in aid of the Lower Court's jurisdiction, for such an argument would be contrary to the purpose of the 1948 revision of the anti-injunction statute. The phrase in 28 U. S. C. 2283 allowing Federal Court injunctions against State Court suits when "in aid of its jurisdiction" was included in the statute to protect the Federal Courts' removal jurisdiction. The anti-injunction statute is especially applicable where an injunction is sought by the United States as a party, for necessarily the conflict of State and Federal jurisdiction, which gave rise to the anti-injunction statute, is aggravated where the Government as plaintiff seeks to enjoin a coordinate State Court.

II. Even more fundamentally, the Federal Court *in rem* action which was filed seven months after petitioner's State Court *in rem* suit must be dismissed or abated. Petitioner's petitory action in the State Court,

and this subsequently filed action to quiet title to the identical property in the Federal Court are each *in rem* actions, as the courts below tacitly conceded. Of necessity two *in rem* actions can not proceed concurrently. Therefore, the Federal Court is disabled from exercising any power over the same *res* which is involved in the State Court suit, by injunction or otherwise. *Hagan v. Lucas*, 10 Pet. 400 (1836); *Toucey v. New York Life Ins. Co.*, 314 U. S. 118. This priority of jurisdiction rule is not only applicable to cases where the *res* is actually *in custodia legis*, but applies as well where to give effect to its jurisdiction or to effectuate its decree the Court must control the property. *Lion Bonding & S. Co. v. Karatz*, 262 U. S. 77. The rule of the *res* cases is fully applicable to the United States. *United States v. Bank of New York & Trust Co.*, 296 U. S. 463. The Federal Court does not have exclusive jurisdiction of a title claim of the United States. *United States v. Bank of New York & Trust Co.*, 296 U. S. 463. The State Courts, equally with the Federal Courts, have the inherent power concurrently to adjudicate upon Federal claims and Federal jurisdiction, subject to ultimate review by this Court. *United States v. Bank of New York & Trust Co.*, 296 U. S. 463; *Amalgamated C. W. of A. v. Richman Bros.*, 348 U. S. 511. Nor does the principle of sovereign immunity justify interference with petitioner's previously filed real action. The Government may intervene in the State proceeding as plaintiff with no sacrifice of its sovereign dignity or rights, *United States v. Bank of New York & Trust Co.*, *supra*; and under Louisiana practice an intervention by the Government in petitioner's State Court action would not

cause the Government to become a defendant being sued without its consent. Louisiana Code of Practice, Art. 392; *State, ex rel. Pope v. Bunkie Coca-Cola Bottling Co.*, 222 La. 603, 63 So. (2d) 13.

III. In any event, the Court should grant petitioner's alternative motion to stay based on the "doctrine of abstention". On the merits the title controversy over the minerals in both the Federal and State suits will turn upon an interpretation of Louisiana Act 315 of 1940. This 1940 Louisiana Act has not yet been tested by the Louisiana Supreme Court against a claim that it violates the Federal Constitution. Such an issue would be squarely presented in petitioner's presently enjoined State Court action. This Court will not permit the Federal Courts to reach for such constitutional questions in the absence of a definitive determination of the local law by the State Courts. *Railroad Commission of Texas v. Pullman Co.*, 312 U. S. 496; *Hillsborough Township v. Cromwell*, 326 U. S. 620. It is an established principle that the local land law of a State is supreme, and the rights and interests of the United States may be made subject to State rules of property. *United States v. Fox*, 94 U. S. 315. On the merits in petitioner's State Court suit the question of the supremacy of power of the State law of property as against a Federal constitutional attack will emerge, although the Louisiana Supreme Court's decision may render unnecessary a determination of such constitutional questions. In the absence of an authoritative State Court decision interpreting the 1940 Louisiana Act, the Federal Courts should abstain from exercising jurisdiction in this case.

ARGUMENT.

I.

28 U. S. C. 2283 IS APPLICABLE TO THE UNITED STATES AND PROHIBITS THE INJUNCTION ISSUED IN THIS CASE.

For convenience we again quote 28 U. S. C., 2283:⁸

“A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments. June 25, 1948, c. 646, 62 Stat. 968.”

The recent expression of this Court in *Amalgamated C. W. of A. v. Richman Bros.*, 348 U. S. 511, 99 L. Ed. 600 (1955), is convincing that Section 2283 is applicable to the United States, and forbade the District Court from enjoining petitioner's State Court action in Plaquemines Parish.

The better light which the *Richman* case has cast upon Section 2283, as well as upon its progenitor statutes, makes it petitioner's duty to present preliminarily this question to the Court, although, as has been already noted, petitioner heretofore seemingly has yielded to the earlier Lower Court decisions holding that the previous anti-injunction statutes did not apply to suits brought by the Government. Nevertheless, petitioner did not abandon

⁸ Based upon Title 28 U. S. C., 1940 Edition, Sect. 379 (Mar. 3, 1911, c. 231, Sect. 265, 36 Stat. 1162 [derived from R. S. Sect. 720]).

this point, and the petition for certiorari, particularly when considered with the brief in opposition,⁹ fairly raises for consideration here the question now discussed.

The 1955 decision in *Amalgamated C. W. of A. v. Richman Bros.*, 348 U. S. 511, makes it clear that this Court will not sanction any departure from the clear-cut prohibition of 28 U. S. C. 2283 unless justified "by specifically defined exceptions". The *Richman* case was decided only recently, but the essential facts leading to the decision in the case may bear repeating: Petitioner, an unincorporated association of clothing workers, was sued in an Ohio State Court by Richman Brothers for temporary and permanent injunctions levelled at the union's peaceful picketing. After an unsuccessful attempt by the union to remove the case to the Federal Court the union applied to the Federal District Court for an injunction to compel Richman Brothers to withdraw the State Court action. Although this Court expressly assumed that the conduct in controversy was fully subject to the Taft-Hartley Act, and

⁹ In its brief in opposition, the United States undertook at some length (brief in opposition, pp. 9-11) to show that the prohibition of Section 2283 did not apply to the present injunction against the State Court proceeding, and cited a number of Lower Court authorities so holding, namely, *United States v. McIntosh*, 57 F. (2d) 573 (E. D. Va., 1932); *United States v. Cain*, 72 F. Supp. 897 (W. D. Mich., 1947); *United States v. Phillips*, 33 F. Supp. 261 (N. D. Okla., 1940); *Brown v. Wright*, 137 F. (2d) 484 (C. A., 4th, 1943); *United States v. Taylor's Oak Ridge Corp.*, 89 F. Supp. 28 (E. D. Tenn., 1950); *United States v. Prince William County*, 9 F. Supp. 219 (E. D. Va., 1934), affirmed 79 F. (2d) 1007 (C. A., 4th), cert. den., 297 U. S. 714, (1936); *United States v. Inaba*, 291 Fed. 416 (E. D. Wash., 1923). To these may be added the additional Lower Court cases of *United States v. Babcock*, 6 F. (2d) 180 (D. C. Ind., 1925), affirmed *Babcock v. United States*, 9 F. (2d) 905 (C. C. A., 7th, 1925); *United States v. Dewar*, 18 F. Supp. 981 (D. C. Nev., 1937); *United States v. Western Fruit Growers*, 34 F. Supp. 794 (D. C. Cal., 1940), affirmed *Western Fruit Growers v. United States*, 124 F. (2d) 381 (C. C. A., 9th, 1941).

that, therefore, the State Court was without jurisdiction to decide upon the subject matter in the State Court litigation, it was held that an injunction by the Federal Court was prohibited by 28 U. S. C. 2283, and that the Federal questions—including the alleged utter want of jurisdiction in the State Court—would be left for State Court decision, subject to ultimate review by this Court. Said Your Honors in the *Richman* case:¹⁰

“In the face of this carefully considered enactment, we cannot accept the argument of petitioner and the Board, as *amicus curiae*, that Section 2283 does not apply whenever the moving party in the District Court alleges that the state court is ‘wholly without jurisdiction over the subject matter, having invaded a field pre-empted by Congress.’ No such exception had been established by judicial decision under former Sect. 265. In any event, Congress has left no justification for its recognition now. This is not a statute conveying a broad general policy for appropriate ad hoc application. Legislative policy is here expressed in a clear-cut prohibition qualified only by specifically defined exceptions.”

¹⁰ The *Richman* case, which was decided over two months after the present case was submitted to the Court of Appeals, was not discovered by petitioner prior to the filing of the petition for certiorari in this case. Such circumscribed research for a petition for certiorari has recently received implicit approbation by Mr. Justice Frankfurter in *Carter v. United States*, ____ U. S. ____, 100 L. Ed. ____ (Adv. pp. 35, 36), where he said: “And counsel may be appropriately reminded that the requirements of the Rules of this Court regarding the contents of a petition for certiorari seldom call for the kind of research which may be demanded for a brief on the merits.”

It is true that the majority opinion in the *Richman* case undertook to demonstrate that the union was not the proper party plaintiff to institute the suit for an injunction. However, the dissenting opinions leave little doubt that apart from the limitations of 28 U. S. C. 2283 the District Court had jurisdiction of the union's complaint under 28 U. S. C. 1337.

The historical background of 28 U. S. C. 2283 has been so fully covered by the 1941 decision in *Toucey v. New York Life Ins. Co.*, 314 U. S. 118, 86 L. Ed. 100, that it would be tedious to repeat what was there said. See also Taylor and Willis, *The Power of Federal Courts to Enjoin Proceedings in State Courts*, 42 Yale L. J., p. 1169. It is sufficient here to say that the *Toucey* and *Richman* decisions unqualifiedly stand for the proposition that short of a statutory exception to the proscription of 28 U. S. C. 2283, no departure from 2283 will be allowed, save in one instance only.¹¹

Respondents can not point to any "express" authorization by Congress to justify the injunction in the present case, and the "judicial exception" which the Lower Court decisions already referred to have interpolated in favor of the Government was an unauthorized straying

¹¹ This is the rule of the *res* cases, which of course is the fundamental principle invoked by petitioner upon this review. As pointed out by Mr. Justice Frankfurter in the *Toucey* case, the exception of the "*res* cases", which has become imbedded in the anti-injunction statute, has its roots in the same policy from which sprang the anti-injunction statute itself.

from the positive provisions of the congressional enactments.¹²

Moreover, the Lower Court's injunction is not justified as being "in aid of its jurisdiction".

The 1948 Reviser's Note under 28 U. S. C. 2283 declares the purpose of that phrase as follows:

"The phrase 'in aid of its jurisdiction' was added to conform to section 1651 of this title and to make clear the recognized power of federal courts to stay proceedings in State cases removed to the district courts."¹³

The *Richman* case itself, especially in view of the vigorous dissenting opinion, precludes respondents from using the quoted phrase to support the injunction here, for as pointed out in the dissenting opinion in the *Richman* case, 28 U. S. C. 1337 generally vested the District Court with jurisdiction of the union's cause of action. But even if we were to take the narrowest view of the prevailing opinion in *Richman*, that the District Court had no jurisdiction of the union's complaint and that, therefore,

¹² Nothing to the contrary was held in *Bowles v. Willingham*, 321 U. S. 503, 510, 88 L. Ed. 892; *Porter v. Lee*, 328 U. S. 246, 90 L. Ed. 1199; *Porter v. Dicken*, 328 U. S. 252, 255, 90 L. Ed. 1203; and *Fleming v. Rhodes*, 331 U. S. 100, 108, 91 L. Ed. 1368, as in each of these cases the Court determined that Congress had created a special exception to the anti-injunction statute. Some of the language in *Capital Service v. N. L. R. B.*, 347 U. S. 501, 98 L. Ed. 887, which cites with approval, and apparently follows, *Bowles v. Willingham*, *supra*, is now of doubtful validity in view of the Court's considered pronouncement in the *Richman* case.

¹³ See *Nongard v. Burlington County Bridge Com'n.*, 229 F. (2d) 622, 625 (C. A., 3rd, 1956), following the *Richman* case and expressly relying on the Reviser's Note.

"such non-existent jurisdiction cannot be aided", respondents would be no better off. For the present case would fit even into that narrow category. By virtue of the previously pending *in rem* State Court suit the Court below was "disabled from exercising any power"¹⁴ over the *res* and the Louisiana State Court proceeding. Such disabled jurisdiction cannot be aided.

Further it would not do to say, as the Government's brief in opposition seems to suggest, that 28 U. S. C. 1345¹⁵ entitles the Government to circumvent Section 2283. Although Section 1345 confers jurisdiction generally on the district courts where the United States is plaintiff, the same can be said of ordinary diversity jurisdiction under 28 U. S. C. 1332. The pertinent language of Sections 1345 and 1332¹⁶ is identical, and it would amount to an absurd negation of the anti-injunction statute if the general jurisdiction statutes were allowed to supersede Section 2283 under the pretext that injunctive relief was needed to "aid" such general—and otherwise existing—jurisdiction.

The rationale of some of the earlier decisions which sought to justify intercalating in the anti-injunction statute an exception in favor of the Government is based on a

¹⁴ *Toucy v. New York Life Ins. Co.*, 314 U. S. 118, 136.

¹⁵ "Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress. June 25, 1948, c. 646, 62 Stat. 933."

¹⁶ "(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$3,000 exclusive of interest and costs, and is between:

"(1) Citizens of different states; * * *"

false premise. The first of such decisions which started this unwarranted departure from the injunction act was ~~decision in the case bear repeating: Petitioner, an un-~~ *United State v. Inaba*, 291 Fed. 416 (E. D. Wash., (1923)). There it was reasoned that if the United States were not allowed an injunction it would force the Government indirectly to subject itself to suit in the State Court in violation of the Government's sovereign immunity. But it is clear, and as we shall point out in a subsequent portion of this brief, the United States even without specific congressional authority can be and frequently is made a party plaintiff in a State Court suit where without diminution of its sovereign dignity it can assert and often has asserted its claims.¹⁷

This Court's decision in *United States v. United Mine Workers of America*, 330 U. S. 258, 91 L. Ed. 884 (1947), is not authority for the injunction in the present matter. In this widely publicized case there was involved the validity of the contempt proceedings brought by the

¹⁷ This faulty reasoning in *United States v. Inaba* and other lower court cases to the same effect is pointed out in the comprehensive article from the Yale Law Journal already cited, Taylor and Willis, *The Power of Federal Courts to Enjoin Proceedings in State Courts*, 42 Yale L. J. 1169, 1192 (1933). The article further mentions that the decisions involving the United States as plaintiff constitutes "the most recent exception made to the injunction statute, and one which has not yet received the sanction of the Supreme Court, * * *." The dictum of Mr. Justice Miller in *United States v. Lee*, 106 U. S. 196, 222, 27 L. Ed. 171, is certainly no such sanction, particularly when Mr. Justice Miller was merely making a suggestion in the nature of a prophecy which would take place after the ejectment action in *United States v. Lee* had been terminated.

And see *United States v. Parkhurst-Davis Mercantile Co.*, 176 U. S. 317, 320 (1900), for an instance where the prohibition against injunctions was specifically applied to the Government, although it must be conceded that the short opinion of Mr. Justice Brewer is rather unsatisfactory and the decision itself was sought to be distinguished in the *Inaba* case, 291 Fed. 416, 417.

United States against the United Mine Workers for disobedience of the injunction issued by the Court below. It was vigorously contended on appeal by the Mine Workers Union that the Clayton and the Norris-LaGuardia Acts prohibiting the Federal Courts from issuing injunctions in cases "between an employer and employees" stripped the lower court of the power to issue the injunction which was the basis of the contempt order. Although the leading opinion¹⁸ adverted preliminarily (330 U. S. 272, 273) to the "old and well known rule that statutes which in general terms divest pre-existing rights or privileges will not be applied to the sovereign without express words to that effect", the subsequent portions of the opinion by Mr. Chief Justice Vinson (330 U. S. 273-276) demonstrate that the majority view was really based on the fact that the express terms of the Norris-LaGuardia Act necessarily excluded the United States from its operation. It is seriously to be doubted whether a majority of the Court in the *United Mine Workers* case concurred in even the preliminary observations by the Chief Justice. Four of the members of the Court¹⁹ all unequivocally declared that despite the language of the federal enactments referred to, the prohibition against the issuance of injunctions by federal courts in the Norris-LaGuardia Act was applicable to the United States. And the two remaining members²⁰ of the Court who dissented on other grounds from the holding of the majority only briefly concurred, without further

¹⁸ Written by Mr. Chief Justice Vinson, and joined by Mr. Justice Reed and Mr. Justice Burton.

¹⁹ Mr. Justice Frankfurter, Mr. Justice Jackson, Mr. Justice Murphy and Mr. Justice Rutledge.

²⁰ Mr. Justice Black and Mr. Justice Douglas.

explanation, on the point that the federal acts did not bar the Government from obtaining the injunction it sought.

No comfort on this phase of the case can be derived by respondents from the injunction which the Court granted June 11, 1956 at the request of the United States staying proceedings in a Louisiana State Court in connection with the tidelands litigation, *United States v. Louisiana*, No. 15, Original. In the tidelands litigation Your Honors' stay order of June 11, 1956, was issued to protect its *previously acquired in rem* jurisdiction, which is recognized as the sole "judicial" exception imbedded in the anti-injunction law. In fact, the motion of the United States, and the supporting brief for the injunction last June in *United States v. Louisiana* took pains to point out (pages 11 and 12, brief in support of Government's motion for an injunction) that "this is not the kind of case which can be carried on in two courts at once, as is possible with certain purely *in personam* actions".

The policy which led to the original enactment of the anti-injunction statute and which has continued to support its regular re-enactment is especially appropriate in cases where the United States as plaintiff seeks to enjoin State Court proceedings. For in such a case the unseemly conflict of jurisdiction with its resulting friction is accentuated by the additional circumstance that it is at the demand of the general sovereign itself that the function of the Court of a coordinate sovereign is sought to be stifled.

It is submitted that although Section 2283 requires the dissolution of the injunction, it would incompletely resolve the problem. There would still remain the basic con-

flict of jurisdiction represented by the current pendency of the two *in rem* actions, which of necessity cannot proceed independently to a final decision in both State and Federal Courts.

We address ourselves to this fundamental question.

II.

THE PENDING AND PRESENTLY ENJOINED SUIT IN THE LOUISIANA STATE COURT IS AN IN REM, OR QUASI IN REM, ACTION, AND THE PRESENT SUIT WHICH WAS SUBSEQUENTLY FILED IN THE UNITED STATES DISTRICT COURT IS OF THE SAME NATURE. THEREFORE, THE PRESENT ACTION, WHICH WAS SUBSEQUENTLY FILED, MUST BE DISMISSED OR ABATED, OR, AT LEAST, STAYED.

Because of practical necessity, two *in rem* actions cannot proceed concurrently. Therefore, the rule has become firmly entrenched in decisional law that the Court which is subsequently resorted to for the purpose of securing a judgment for, or jurisdiction and control of, the same *res* is "disabled from exercising any power over it, by injunction or otherwise".²¹

This fundamental precept springs from the same root principle that gave birth to the anti-injunction statute itself. It would be idle to cite more decisions than are needed to exemplify the invoked rule and to demonstrate that it is fully applicable to the case at bar. In varying situations the following decisions have applied this rule of necessity. *Hagan v. Lucas*, 10 Pet. 400, 9 L. Ed. 470 (1836); *Orton v. Smith*, 18 How. 263, 15 L. Ed. 393, 395

²¹ *Toucey v. New York Life Ins. Co.*, 314 U. S. 118, 136.

(1856); *Taylor v. Carryl*, 20 How. 583, 15 L. Ed. 1028, 1031-1032 (1858); *Buck v. Colbath*, 3 Wall. 334, 18 L. Ed. 257 (1866); *Covell v. Heyman*, 111 U. S. 176, 28 L. Ed. 390, 392-393 (1884); *Byers v. McAuley*, 149 U. S. 608, 37 L. Ed. 867, 871 (1893); *Wabash R. Co. v. Adelbert College*, 208 U. S. 38, 52 L. Ed. 379, 386 (1908); *Palmer v. Texas*, 212 U. S. 118, 53 L. Ed. 435 (1909); *Lion Bonding & S. Co. v. Karatz*, 262 U. S. 77, 67 L. Ed. 871 (1923); *Penn General Casualty Co. v. Pennsylvania*, 294 U. S. 189, 79 L. Ed. 850 (1935); *United States v. Bank of New York & Trust Co.*, 296 U. S. 463, 80 L. Ed. 331 (1936); and *Toucey v. New York Life Ins. Co.*, 314 U. S. 118, 86 L. Ed. 109 (1941). The law of Louisiana is in accord with the Federal rule, *Ferriday v. Middlesex Banking Co.*, 118 La. 770, 43 So. 403 (1907).

In the present matter both the previously filed State Court action and the present Federal action qualify as *in rem*, or *quasi in rem*, actions. Indeed, little or no argument has been made by opposing counsel on this score, and the opinions of the Lower Courts both tacitly concede that the nature of the two pending actions is such as otherwise to make controlling here the invoked rule.²²

²² The following authorities leave no doubt that the rule is applicable to the State Court petitory action and to this, the subsequently filed action in Federal Court to quiet the title of the Government to the same minerals: *Orton v. Smith*, 18 How. 263, 15 L. Ed. 393 (1856); *Covell v. Heyman*, 111 U. S. 176, 28 L. Ed. 390 (1884); *Heidritter v. Oil Cloth Company*, 112 U. S. 294, 28 L. Ed. 729 (1884); *Franz v. Franz*, 15 F. (2d) 797 (C. C. A., 8th, 1926); *Barnett v. Mayes*, 43 F. (2d) 521 (C. C. A., 10th, 1930); *Westfield v. North Carolina Mining Co.*, 166 Fed. 706 (C. C. A., 4th, 1909), (per Mr. Chief Justice Fuller sitting as Circuit Justice); and *Ferriday v. Middlesex Banking Co.*, 118 La. 770, 43 So. 403 (1907), (where the exact converse of the present situation existed—and where the Louisiana Supreme Court stayed further proceedings in the subsequently filed State Court petitory action by reason of the prior pendency of a petitory action in Federal Court).

Respondents have attempted to avoid the priority of jurisdiction rule by contending that it is not applicable in cases where the *res* is not actually *in custodia legis*. But it is well settled that it is no requirement of the applicability of this principle that the *res* be presently under seizure or is currently held *in custodia legis*. *United States v. Bank of New York & Trust Co.*, *supra*; *Farmers' Loan & T. Co. v. Lake Street Elevated R. Co.*, 177 U. S. 51, 44 L. Ed. 667 (1900); *Lion Bonding & S. Co. v. Karatz*, 262 U. S. 77, 67 L. Ed. 871 (1923); *Princess Lida v. Thompson*, 305 U. S. 456, 83 L. Ed. 285 (1939). And see *Emil v. Hanley*, 130 F. (2d) 369, 370 (C. C. A., 2nd, 1942), where Circuit Judge Learned Hand accurately stated that "for priority between courts in point of jurisdiction depends, not upon the day when the property comes into their possession but upon that of the commencement of the first suit in which possession can be taken."

The priority of jurisdiction rule which petitioner invokes is fully applicable to the United States. Respondents do not challenge this proposition. Since this Court's decision in *United States v. Bank of New York & Trust Co.*, 296 U. S. 463, 80 L. Ed. 331 (1936), the question whether the rule of the *res* cases is applicable to the United States has not been open to argument.

The relevance of the *Bank of New York & Trust Co.* case and the vigorous attempts of respondents to distinguish it from the case at bar, justify a fuller statement of the facts of the case: The Russian Government had by decrees in 1917 and 1918 dissolved certain Russian insurance corporations which had substantial assets in the United States over and above creditors' claims. Liquidation

tion proceedings had been brought by the New York Superintendent of Insurance in 1925. Federal Court action was commenced by the Government in 1933 as assignee-owner of the entire amount of the assets, at which time the State liquidation in at least two²³ of the cases had been completed, and in at least one of the three cases the only State Court "suit" that was pending was an action by the Russian insurance company and its sole surviving director, claiming ownership or other appropriate disposition of the funds. The funds were not under seizure, or *in custodia legis*, in the State Court proceeding. Nevertheless, the United States was held not authorized subsequently to bring its "title" and injunction suit in the Federal Court to secure recognition of its ownership of and right to possession to the funds over which State Court litigation was already proceeding.²⁴ Said Mr. Chief Justice Hughes for the unanimous Court, 296 U. S. 463, 479:

"The fact that the complainant is the United States does not justify a departure from the rule which would otherwise be applicable."

²³ There were three separate actions which were consolidated for decision by this Court, one of which, the title case, involved the Bank of New York & Trust Company.

²⁴ In respondent's brief in opposition, as in the Courts below, a distinction is sought to be made between the Bank of New York & Trust Co. case and the case at bar, by reference to the fact that the Government's "title" claim in the cited case came into effect several years after the New York Court proceedings took place. In any event, this would be a distinction without a material difference, but reference to the Court of Appeals' decision in the Bank of New York & Trust Co. case, 77 F. (2d) 866, 868, 869, shows that that Court assumed as correct that the United States' title claim originated as of the date (1917 and 1918) that the Russian Government dissolved the Russian corporations, since by the 1933 act of assignment the United States merely stepped into the shoes of the Russian Government; and upon review here this assumption of fact was undisturbed.

The *Bank of New York & Trust Co.* case also dissipates the remaining contentions of respondents. One of the principal contentions that the Government has made in the present matter is that the Federal Court has "exclusive jurisdiction" of the title claim of the United States, and that for that reason the present and subsequently filed title suit must proceed and the Louisiana State Court action must be abated. This contention is in the very teeth of this Court's holding in the *Bank of New York & Trust Co.* case, where Your Honors declared in overruling the same argument there made by the Government that:

"The Government insists that the United States is entitled to have its claim determined in its own courts. But the grant of jurisdiction to the District Court in suits brought by the United States does not purport to confer exclusive jurisdiction. It is a general rule that the grant of jurisdiction to one court does not, of itself, imply that the jurisdiction is to be exclusive."

The principle that the Federal Court does not have exclusive jurisdiction to determine the claims of the United States did not originate with the *Bank of New York & Trust Co.* case. The rule had long been the same and has been repeatedly applied, *Cotton v. United States*, 11 How. 229, 13 L. Ed. 675 (1850); *Robb v. Connolly*, 111 U. S. 624, 28 L. Ed. 542, 546 (1884); *Plaquemines Tropical Fruit Co. v. Henderson*, 170 U. S. 511, 42 L. Ed. 1126 (1898); *Merryweather v. United States*, 12 F. (2d) 407 (C. C. A., 9th, 1926); *People's Trust Co. v. United States*, 23 F. (2d) 381 (C. C. A., 1st, 1928); *United States v. Jacobs*, 100 F. Supp. 189 (N. D. Ala., S. D., 1951); cf., *Ames v. Kansas*, 111 U. S. 449, 28 L. Ed. 482 (1884).

As the Court long ago declared in *Cotton v. United States*:

"Although as a sovereign the United States may not be sued, yet as a corporation or body politic they may bring suits to enforce contracts and protect their property, in the state courts, or in their own tribunals administering the same laws. As an owner of property in almost every state of the Union, they have the same right to have it protected by the local laws that other persons have."

As we have already seen, the inherent power of the State Courts concurrently to adjudicate upon federal claims and federal jurisdiction only last year received strong reaffirmation in *Amalgamated C. W. of A. v. Richman Bros.*, 348 U. S. 511, 518, 99 L. Ed. 600. The Court was there considering the question whether 28 U. S. C. 2283 was applicable to a Federal Court complaint which alleged the utter want of jurisdiction of the State Court, and Your Honors said, in language that is strikingly appropriate here:

"The assumption upon which the argument proceeds is that federal rights will not be adequately protected in the state courts, and the 'gap' complained of is impatience with the appellate process if state courts go wrong. But during more than half of our history Congress, in establishing the jurisdiction of the lower federal courts, in the main relied on the adequacy of the state judicial systems to enforce federal rights, subject to review by this Court. With limited exceptions, it was not until 1875 that the lower federal courts

were given general jurisdiction over federal questions. During that entire period, the vindication of federal rights depended upon the procedure which petitioner attacks as so grossly inadequate that it could not have been contemplated by Congress. The prohibition of § 2283 is but continuing evidence of confidence in the state courts, reinforced by a desire to avoid direct conflicts between state and federal courts."

Entwined with the Government's contention that the Federal Court has exclusive jurisdiction of the title claim by the United States—which is demonstrably without foundation—is the Government's reliance upon the principle of sovereign immunity. Cases²⁵ have been cited by the Government, and doubtless will be cited here, in an attempt to demonstrate that the immunity of the United States from suit is a justification for the present Federal Court proceeding and the injunction against the previously filed State Court action.

But this same contention was pressed upon the Court by the Government in the *Bank of New York & Trust Co.* case without avail.²⁶ In answering the Govern-

²⁵ *Stanley v. Schwalby*, 162 U. S. 255, 40 L. Ed. 960 (1896); *Minnesota v. United States*, 305 U. S. 382, 83 L. Ed. 235 (1939); *Carr v. United States*, 98 U. S. 433, 8 Otto 433, 25 L. Ed. 209 (1879); *United States v. Shaw*, 309 U. S. 495, 84 L. Ed. 888 (1940); *United States v. U. S. Fidelity Co.*, 309 U. S. 506, 84 L. Ed. 894 (1940); *Louisiana v. Garfield*, 211 U. S. 70, 53 L. Ed. 92 (1908); *Hanson v. Domestic & Foreign Commerce Corp.*, 337 U. S. 682, 93 L. Ed. 1623 (1949); *Mine Safety Appliances Co. v. Forrestal*, 326 U. S. 371, 90 L. Ed. 140 (1945).

²⁶ The United States there cited among other decisions *United States v. Inaba*, 291 Fed. 416, and *Stanley v. Schwalby*, 162 U. S. 255, 40 L. Ed. 960.

ment's argument on this point Mr. Chief Justice Hughes said:

"There is no merit in the suggestion that the United States, in presenting its claim in the state proceedings, would be compelled to take the position of a defendant,—being sued without its consent. In intervening for the presentation of its claim, the United States would be an actor—voluntarily asserting what it deemed to be its rights—and not a defendant. We cannot see that there would be impairment of any rights the United States may possess, or any sacrifice of its property dignity as a sovereign, if it prosecuted its claim in the appropriate forum where the funds are held."

Louisiana procedural law is in perfect harmony with this ruling in the *Bank of New York & Trust Co.* case. We have already quoted Article 392 of the Louisiana Code of Practice to show that in Louisiana an intervener is "considered as plaintiff"; and the latest decision of the Louisiana Supreme Court in *State, ex rel. Pope v. Bunkie Coca-Cola Bottling Co.*; 222 La. 603, 63 So. (2d) 13, 14 (1953), elucidates the rule as follows:

"It follows that while an intervener is considered as plaintiff, insofar as he must follow the jurisdiction of the defendant, he is, nevertheless a plaintiff in intervention who fights for his own hand; that is, he does not lose his identity in that of the original plaintiff, neither does he lose such identity in that of the original defendants."

The United States has continued to complain that the Government is powerless to intervene in the pending

State Court action, and that short of authorization by Congress it could not so proceed. Of course this contention, as we have seen, runs afoul of the considered decision in the *Bank of New York & Trust Co.* case, and it further disregards express congressional sanction for such action. For if any congressional authority for taking the prescribed action in the State Court is needed, Title 5, U. S. C. 316 amply provides it, to-wit:

"Sect. 316. *Interest of United States in pending suits.* The Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in any suit pending in any of the courts of the United States, or in the courts of any State, or to attend to any other interest of the United States."²⁷

Wholly disregarding the right of the Government to intervene as plaintiff in the Louisiana Court proceeding, respondents assert that the State Court is without jurisdiction by reason of the absence of the United States in that litigation. But the absence of the United States as a party litigant in the New York State Courts was not considered an adequate reason for granting the Government's injunction in its subsequently filed Federal Court suit in the *Bank of New York & Trust Co.* case. See also

²⁷ See also *New York v. New Jersey*, 256 U. S. 296, 308, 65 L. Ed. 937, 943 (1921); *Ponzi v. Fessenden*, 258 U. S. 254, 262, 66 L. Ed. 607, 612 (1922); *Merryweather v. United States*, 12 F. (2d) 407, 410 (C. C. A., 9th, 1928); and *United States v. Jacobs*, 100 F. Supp. 189 (N. D. Ala., S. D., 1951).

Hart v. United States, 207 F. (2d) 813 (C. A., 8th, 1953), where the same argument was unsuccessfully made by the Government.

It is and has been from the outset petitioner's position that the State Court, even in the absence of the United States as a party, was entitled to proceed in petitioner's suit, although, of course, in the absence of the United States any State Court decree rendered there would not have the effect of *res judicata* against the Government. State District Judge Bruce Nunez, prior to the time that he was stopped by the restraining order in this case, rightly held that he had jurisdiction of the State Court case (R. 145-149, and particularly cases cited R. 146).

Petitioner brought its petitory action in Plaquemines Parish against the lessees in possession of the immovable property. Under Louisiana Code of Practice Article 43, such an action "must be brought" against such persons. And where the lessor as in the present case is the sovereign, the Louisiana rule, crystallized in its Supreme Court decisions,²⁸ permits the plaintiff to proceed to judgment as against the lessees.

The Louisiana procedural rule is consistent with the basic reasoning in prior decisions of this Court. *United States v. Lee*, 106 U. S. 196, 27 L. Ed. 171 (1882); *Tindal v. Wesley*, 167 U. S. 204, 42 L. Ed. 137 (1897); and

²⁸ *Dreux v. Kennedy*, 12 Rob. 489 (1846); *Richardson v. Liberty Oil Co.*, 143 La. 130, 78 So. 326 (writ of error dismissed, 250 U. S. 648, 63 L. Ed. 1188, 1919); and *State, ex rel. Brenner v. Noe*, 186 La. 102, 171 So. 708 (1936).

Land v. Dollar, 330 U. S. 731, 737, 91 L. Ed. 1209, 1215 (1947).²⁹

In petitioner's reply brief in support of the petition for certiorari in the present case, there was brought to this Court's attention the Lower Court's decision in *Gulf Refining Company v. Price*, No. 15622 (C. A., 5th, Feb. 2, 1956), which on the present point was entirely inconsistent with the Court's decision in the present matter. In the *Gulf Refining* case the pertinent facts and issues were: Isaac R. Price, et al., claiming to be the owners of several hundred acres of oil property in Plaquemines Parish, Louisiana,³⁰ filed in the United States District Court for the Eastern District of Louisiana a *petitory action*³¹ against Gulf Refining Company, the oil, gas and mineral lessee in possession of the property under lease from the State of Louisiana. The chief defense, or as the Court below expressed it, "the most serious issue", in the *Gulf Refining* case, was whether or not the State of Louisiana, Gulf's mineral lessor, was an indispensable party

²⁹ *Stanley v. Schwalby*, 162 U. S. 255, 40 L. Ed. 960 (1896), has been repeatedly cited by respondents as announcing a different rule, but an examination of *Stanley v. Schwalby* will show that to be incorrect. In the *Schwalby* case the United States, by reason of its immunity from suit, was ordered dismissed from the State Court action, but the Court remanded the case to the Texas State Court with instructions to enter judgment on the merits for the individual defendants who had been initially sued by the plaintiff—title claimants. These individual defendants who thereby secured a judgment on the merits were army officers in possession of the United States Military Reservation at San Antonio.

³⁰ By coincidence the property involved in the present matter is also located in Plaquemines Parish. There is no connection whatsoever, however, between the present litigation and the *Gulf Refining* case.

³¹ This is precisely the same type of action which was filed by petitioner in the State Court, and which now stands temporarily enjoined.

to the petitory action brought by the Price group asserting title to the property. The Court in its February 2, 1956 opinion rejected Gulf's defense, and held that Isaac R. Price, et al., were entitled to proceed to judgment against Gulf to secure a decree recognizing the Price title as against the mineral lessee in possession under a mineral lease from the State of Louisiana. In doing so the Court below relied on the same authority³² and the same reasons which were relied upon by petitioner in the now enjoined and pending State Court case, as will be seen by the opinion of State District Judge Bruce Nunez (R. 146) upholding his jurisdiction prior to the time petitioner was restrained from proceeding further in his Court.

Almost immediately after petitioner learned of the Lower Court's February 2, 1956, opinion in the *Gulf Refining* case, it was brought to Your Honors' attention by the reply or supplemental brief filed in support of the petition for certiorari. Thereafter, the Court below by order dated April 6, 1956, withdrew and set aside its February 2, 1956 opinion and handed down an entirely new decision which made no reference to the authorities or to

³² *Dreux, et al., v. Kennedy, et al.*, 12 Robinson (La. Reps.) 489, 504. This is the leading Louisiana case authorizing a petitory action to be filed and prosecuted against a person (such as a mineral lessee) holding under a lease or other color of right from the sovereign. It is noteworthy that in *Dreux v. Kennedy* that the alleged owner of the property—just as here—was the United States. There is obviously no distinction that can be drawn from the circumstance that in the *Gulf Refining* case the lessor-sovereign was the State of Louisiana, and that in the present case the United States is the lessor, and indeed the Court of Appeals in the *Gulf Refining* case rightly saw the problem as identical no matter which of the two sovereigns was involved.

the points at issue covered by its earlier decision, and decided the case on a different ground.³³

Although insofar as the reported decision in the *Gulf Refining* case is concerned (232 F. (2d) 25), the earlier (February 2, 1956) decision of the Court below in the same case is publicly non-existent, it is respectfully submitted that the rationale of the unpublished opinion is still valid and supports the position of petitioner.³⁴

Finally, respondents' argument regarding the lack of jurisdiction in the State Court proceeding is rebutted by the *Amalgamated C. W. of A. v. Richman Bros.* case, 348 U. S. 511 (1955).

Without repeating what was said there, and what we have heretofore noted, the fact that the complaint in Federal Court alleged the State Court was utterly without jurisdiction—which Your Honors assumed to be correct—was held to be no basis for the issuance of an injunction against the State Court proceeding. The reasoning of the Court in the *Richman* case is equally applicable to respondents' contention that the priority of jurisdiction rule must be jettisoned for alleged want of jurisdiction in the State Court. As Your Honors pointed out in the *Richman* case the Louisiana State Courts may be depended upon to give a right answer to the Government's claim of want

³³ The substituted opinion was based on the factual proposition that no lessor-lessee relationship existed between the State of Louisiana and Gulf Refining Company.

³⁴ To eliminate undue length in the present brief, petitioner will omit attaching the February 2, 1956 opinion as an appendix. However, it appears in *extenso* as Appendix A to petitioner's reply or supplemental brief in support of the petition for certiorari on file in the present matter.

of jurisdiction, and, in any event, and if the respondents are not satisfied with the final State Court ruling, review may be obtained here,

Respondents have heretofore stressed the "irreparable damage" to which the Government and the mineral lessees are exposed by reason of a threatened ouster from the oil field which is here in controversy. This suggestion is more dramatic than practical. Should the decision in the State District Court go against the defendants (either with or without the Government's presence as an intervening plaintiff) possession of the *res* may remain undisturbed by the procedure of a suspensive appeal to the Louisiana Supreme Court (Louisiana Code of Practice, Arts. 575, 577). Should the State's highest Court still decide adversely to the respondents on the issue of possession, upon seeking review by this Court the status quo may of course still be maintained (Supreme Court Rules 18, 27, 51).

Before commencing the final argument of petitioner we pause briefly to emphasize the purpose of the rule of the *res* cases and the policy which underlies the rule. Perhaps nowhere has the delicate balance of power between the Federal and State Courts been better described than by Mr. Justice Matthews in *Covell v. Heyman*, 111 U. S. 176, 182; and it would be difficult better to define the duty of forbearance in such cases than did he, when he there said:

"The forbearance which courts of co-ordinate jurisdiction, administered under a single system, exercise towards each other, whereby conflicts are avoided, by avoiding interference with the process

of each other, is a principle of comity with perhaps no higher sanction than the utility which comes from concord; but between State Courts and those of the United States, it is something more. It is a principle of right and of law and, therefore, of necessity. It leaves nothing to discretion or mere convenience. These courts do not belong to the same system, so far as their jurisdiction is concurrent; and although they co-exist in the same space, they are independent and have no common superior."

III.

IN ANY EVENT THE COURT SHOULD GRANT PETITIONER'S ALTERNATIVE MOTION TO STAY BASED ON THE "DOCTRINE OF ABSTENTION".³⁵

No doctrine has become more firmly entrenched than that the Federal Courts will refrain from passing on questions of constitutionality of a State law unless such a determination is unavoidable; and, therefore, this Court has insisted that Federal Courts should not prematurely decide such questions of constitutionality.

Petitioner, in the alternative, has contended from the inception of this matter that the present Federal suit should be stayed until the final determination of the previously filed State Court suit for the reason, as stated by petitioner in its motion in the District Court (R. 25, 26), that "the said pending litigation in said State Court involves questions of State law which should be determined

³⁵ So termed by Mr. Justice Frankfurter in *Railroad Commission of Texas v. Pullman Co.*, 312 U. S. 496, 85 L. Ed. 971 (1941).

and decided by the State Courts, in that said determination will provide a binding rule of decision upon this Court, and further said State Court decision may render a decision of federal constitutional questions unnecessary."

Although petitioner urged this alternative proposition below, the Court of Appeals disregarded and did not even mention this point, which is supported by repeated decisions of this Court. *Railroad Commission of Texas v. Pullman Co.*, 312 U. S. 496, 498, 499, 85 L. Ed. 971 (1941); *Chicago v. Fieldcrest Dairies*, 316 U. S. 168, 171, 172, 86 L. Ed. 1355 (1942); *Spector Motor Service v. McLaughlin*, 323 U. S. 101, 89 L. Ed. 101 (1944); *Hillsborough Township v. Cromwell*, 326 U. S. 620, 628, 90 L. Ed. 358, 365 (1946); *Kennecott Copper Corp. v. State Tax Com.*, 327 U. S. 573, 579, 90 L. Ed. 862 (1946); *American Federation of Labor v. Watson*, 327 U. S. 582, 589, 596, 599, 90 L. Ed. 873 (1946); *Albertson v. Millard*, 345 U. S. 242, 244, 245, 97 L. Ed. 983 (1953); and *Arkansas v. Texas*, 346 U. S. 368, 371, 98 L. Ed. 80 (1953). And compare *Thompson v. Magnolia Petroleum Co.*, 309 U. S. 478, 484, 84 L. Ed. 876, 881 (1940).

Mr. Justice Frankfurter put it this way in *Spector Motor Service v. McLaughlin*, 323 U. S. 101, 105:

"If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality—here the distribution of the taxing power as between the State and the Nation—unless such adjudication is unavoidable. And so, as questions of federal constitutional power have become more and more intertwined with pre-

liminary doubts about local law, we have insisted that federal courts do not decide questions of constitutionality on the basis of preliminary guesses regarding local law."

And as Mr. Justice Douglas declared in *Hillsborough Township v. Cromwell* (326 U. S. 620, 628):

"We have held that where a federal constitutional question turns on the interpretation of local law and the local law is in doubt, the proper procedure is for the federal court to hold the case until a definite determination of the local law can be made by the State courts."

The District Judge in this case correctly said (R. 159), "the ownership of these mineral rights will turn on an interpretation of a state statute" of Louisiana. The statute in question, as we have already noted, is Act 315 of the Legislature of Louisiana for 1940 (Louisiana Revised Statutes 9:5806), the relevant part of which reads:

"Section 1. Be it enacted by the Legislature of Louisiana, That when land is acquired by conventional deed or contract, condemnation or expropriation proceedings by the United States of America, or any of its subdivisions or agencies, from any person, firm or corporation, and by the act of acquisition, verdict or judgment, oil, gas, and/or other minerals or royalties are reserved, or the land so acquired is by the act of acquisition conveyed subject to a prior sale or reservation of oil, gas and/or other minerals or royalties, still in force and effect, said rights so reserved or previously sold shall be imprescriptible."³⁶

³⁶ This Act is printed in full, Appendix A, *infra*, p. 45.

This Louisiana Statute has been held to be generally retroactive by the Court of Appeals, Fifth Circuit, in *United States v. Nebo Oil Co.*, 190 F. (2d) 1003 (1951), affirming the decision of the District Court, 90 F. Supp. 73. The same general conclusion as to the retroactive nature of this Statute was reached by the Louisiana Supreme Court in *Whitney Bank of New Orleans v. Little Creek Oil Co.*, 212 La. 949, 33 So. (2d) 693 (1947). However, the Supreme Court of Louisiana has not yet rendered any decision (as it would be required to do in petitioner's pending and now enjoined State Court suit) in respect of a mineral reservation contained in a deed from a vendor directly to the United States, as is the situation on the merits in the present controversy; and such a substantial question of local law, involving as it does the legislatively avowed public policy of Louisiana³⁷ should require the Federal Court to refuse to entertain jurisdiction of such a question, rather than to make premature guesses at what the State decision ultimately may be.

The decision of State Judge Nunez in the presently enjoined State action, which is, of course, not presented for consideration or decision on the merits at this time,³⁸ was based upon his analysis of the language of the subject mineral reservation. Judge Nunez determined that the

³⁷ In *United States v. Nebo Oil Co.*, 90 F. Supp. 73, 100, construing the 1940 Louisiana Statute which is the foundation of petitioner's claim on the merits, District Judge Porterie stated: "Moreover, the Federal Government is the largest landowner in Louisiana, and the dedication of large tracts for public purposes, such as forests and game preserves, withdraws these lands from commerce. It would appear entirely reasonable under these circumstances for the Louisiana Legislature to do all in its power to preserve the mineral rights in its citizens."

³⁸ *United States v. Bank of New York & Trust Co.*, 296 U. S. 463, 481; *Land v. Dollar*, 330 U. S. 731, 739.

alleged conventional termination date of the mineral servitude, to-wit: April 1st, 1945, related only to the right of entry, and did not affect the mineral reservation³⁹ as a whole (R. 145, 158). Even if the question on the merits were to be debated upon the plane selected by opposing counsel (i. e., that the 1938 mineral reservation created a mineral servitude with a contractual termination date), there would still remain, among other problems, the important question of whether the 1940 Louisiana Statute would apply as well to a conventional period of limitation as it does to the statutory or codal limitation or prescription of ten years, as petitioner seriously contends. *Ray v. Liberty Industrial Life Ins. Co.*, (La. App., 1938), 180 So. 855. Cf., *Borup v. National Airlines*, 117 F. Supp. 475, 477 (D. C., N. Y., 1954).

In the Government's brief in opposition to the petition for certiorari in this case it was suggested in footnote 1 on page 8 that "There may also be constitutional questions in regard to the validity and effect of the Louisiana Statute." Petitioner acknowledges that it is entirely likely that substantial constitutional questions will arise if one of several definitive interpretations of the 1940 Act is placed upon that Statute. The most obvious constitutional question would arise if the Louisiana Supreme Court should hold that the Statute is applicable to the 1938 reservation by Leiter, and that the Statute has the effect of suspending all prescription or limitation which otherwise

³⁹ The entire mineral reservation is quoted in Appendix B, *Infra*, p. 46. It will be observed that the opinion of the Court below (R. 178) in "summarizing" the provisions of the reservation mentions only the alleged "terminal date" April 1, 1945—which was only some six and a half years after the execution of the deed itself; and yet in three places the term of the reservation is stated to be ten years, which is the normal life of a mineral servitude in Louisiana without user.

would accrue against the mineral servitude which was reserved, whether such prescription or limitation be conventional or statutory. Respondents may be then expected to contend that such a construction of the Statute would impair the obligation of the 1938 contract.⁴⁰ Such a question would not, of course, arise if the State Court's decision were favorable to respondents; and such a question may not arise if, as was the decision of State Judge Nunez, the State Supreme Court's decision were to be based purely upon a construction of the terms of the contract itself.

The "doctrine of abstention", therefore, is particularly suitable to the present matter, where, upon the merits, the question of the controverted title to the mineral rights must be resolved primarily by an application of a Louisiana statute relating to real property. It will not do to say that the Government's title to the minerals involved in this controversy must be determined by some land law foreign to Louisiana, inasmuch as Congress has not acted (and it is questionable whether Congress could constitutionally have acted) on the title to the minerals in question. Mr. Justice Rutledge said for the Court in *United States v. Standard Oil Co.*, 332 U. S. 301, 91 L. Ed. 2067, 2072 (1947):

"It is true, of course, that in many situations, and apart from any supposed influence of

⁴⁰ In the State District Court in presenting their brief in support of their exceptions to dismiss petitioner's petitory action The California Company and Lobrano said: "Any endeavor to apply Act 315 of 1940 so as to strike down the provisions of the United States contract limiting the term of Letter's servitude would be to go completely outside the pale of prescription, with which the *Nebo Oil Company* case was concerned; and would violate the provisions of the United States Constitution protecting vested rights and prohibiting the enactment of any law impairing the obligation of contracts."

the Erie decision, rights, interests and legal relations of the United States are determined by application of state law, where Congress has not acted specifically. * * * The Government, for instance, may place itself in a position where its rights necessarily are determinable by state law, as when it purchases real estate from one whose title is invalid by that law in relation to another's claim."⁴¹

That this concept is not to be confused with, and must be distinguished from, the principle of sovereign immunity from suit is made clear by Mr. Justice Rutledge's footnote to the above quoted language, 332 U. S. 301, 309:

"The problem of the Government's immunity to suit is different, of course, from that of the nature of the substantive rights it may acquire, for example, by the purchase of property as against claims of others for which there may or may not be available a legal remedy against it."

In answer, respondents have contented themselves with a bare reference to some language in *United States v. County of Allegheny*, 322 U. S. 174, 183, 88 L. Ed. 1209 (1944), to the effect that the validity and construction of contracts through which the Government is exercising its constitutional functions "present questions of federal law not controlled by the law of any State". This allusion, of course, does not meet the pith of petitioner's argument.

⁴¹ See also *Reconstruction Fin. Corp. v. United Distill. Corp.*, 229 F. (2d) 665, 667 (2nd Cir., 1956), in which the Court said, in regard to a federal corporation which invoked the jurisdiction of the Federal Court under 28 U. S. C. 1345, that: "On the other hand, the validity of a conveyance of a real property is a matter peculiarly within the area necessarily governed by state law."

For an authoritative decision of the Louisiana Supreme Court may render unnecessary a determination of the supremacy of the Federal or the State law. The correct rule in the present case is not the excerpt quoted from the *Allegheny County* case, but rather is the principle which was settled in 1877 in *United States v. Fox*, 94 U. S. 315, 24 L. Ed. 192, as follows:

"The power of the State to regulate the tenure of real property within her limits, and the modes of its acquisition and transfer, and the rules of its descent, and the extent to which a testamentary disposition of it may be exercised by its owners, is undoubted. It is an established principle of law, everywhere recognized, arising from the necessity of the case, that the disposition of immovable property, whether by deed, descent or any other mode, is exclusively subject to the government within whose jurisdiction the property is situated."

United States v. Fox has been followed by the Court to the present time. *Hutchinson Investment Co. v. Caldwell*, 152 U. S. 65, 68, 38 L. Ed. 356 (1894); *United States v. Perkins*, 163 U. S. 625, 630, 41 L. Ed. 287 (1896); *Sunderland v. United States*, 266 U. S. 226, 232, 233, 69 L. Ed. 259 (1924); and *United States v. Burnison*, 339 U. S. 87, 95, 94 L. Ed. 675 (1950). In the *Burnison* case the Court expressly refused to overrule *United States v. Fox*, saying through Mr. Justice Reed that a California statute prohibiting the United States from receiving property in California by will was "justified by reason of the state's close relationship with its residents and their property. A state may by statute properly prefer itself in this way,

just as states have always preferred themselves in escheat."

The issue presented here stands in bold relief when considered with *Sunderland v. United States*, 266 U. S. 226, 233, 69 L. Ed. 259 (1924), which approved the rule of *United States v. Fox*. There a land claim by the United States on behalf of an Indian ward was recognized in the absence of a State Statute such as we have in the present case. However, the Court specifically recognized that a direct conflict between State and Federal law would have emerged had there been present an Oklahoma statute or rule of law in conflict with the Federal Government's laws protecting Indian lands in Oklahoma, saying:

"The State of Oklahoma is not concerned, since there is no state statute, rule of law or policy, which has been called to our attention, to the contrary effect. If there were, or if the power of state taxation were involved, we should consider the question of supremacy of power; but no such question is presented by this record."

Different from the situation in the *Sunderland* case, a determination of this case on the merits will directly involve the 1940 Louisiana Statute upon which petitioner's title claim is based. Therefore there may well arise "the question of supremacy of power" referred to in the *Sunderland* case. But this question may never emerge if upon this review the Louisiana State Courts are unfettered.

No more striking example for the application of the doctrine of abstention than the case at bar could be presented. Petitioner's alternative motion for a stay of the Federal Court action should be granted.

CONCLUSION.

For the reasons stated it is respectfully submitted that the judgment of the Court below should be reversed.

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ANDREW LANE PLAUCHÉ,

**Counsel for Petitioner,
303 Pioneer Building,**

Lake Charles, Louisiana.

APPENDIX A.**ACT NO. 315****AN ACT**

Providing that when land is acquired by conventional deed or contract, condemnation or expropriation proceedings by the United States of America, or any of its subdivisions or agencies, from any person, firm or corporation, and the act of acquisition, verdict or judgment contains a reservation of oil, gas and/or other minerals or royalties or provides that said land passes subject to a prior sale or reservation of oil, gas and/or other minerals or royalties, still extant, said rights so reserved or previously sold shall be imprescriptible; and repealing Acts 68 and 151 of 1938 and other laws, general or special, inconsistent herewith.

Section 1. Be it enacted by the Legislature of Louisiana, That when land is acquired by conventional deed or contract, condemnation or expropriation proceedings by the United States of America, or any of its subdivisions or agencies, from any person, firm or corporation, and by the act of acquisition, verdict or judgment, oil, gas, and/or other minerals or royalties are reserved, or the land so acquired is by the act of acquisition conveyed subject to a prior sale or reservation of oil, gas and/or other minerals or royalties, still in force and effect, said rights so reserved or previously sold shall be imprescriptible.

Section 2. That Act 68 and Act 151 of 1938 and all other laws or parts of laws, general or special, in conflict herewith are hereby repealed.

Approved by the Governor: July 20, 1940

APPENDIX B.

(The following is the full text of the mineral reservation in the deed from Thomas Leiter to the United States dated December 21, 1938, and which is in the printed record, pp. 81, 82) :

The Vendor reserves from this sale the right to mine and remove, or to grant to others the right to mine and remove, all oil, gas and other valuable minerals which may be deposited in or under said lands, and to remove any oil, gas or other valuable minerals from the premises; the right to enter upon said lands at any time for the purpose of mining and removing said oil, gas and minerals, said right, subject to the conditions hereinafter set forth, to expire April 1, 1945, it being understood, however, that the vendors will pay to the United States of America, 5% of the gross proceeds received by them as royalties or otherwise from all oil or minerals so removed from in or under the aforescribed lands, until such time as the vendors shall have paid to the United States of America, the sum of \$25,000, being the purchase price paid by said United States of America for the aforescribed properties.

Provided, that if at the termination of the ten (10) year period of reservation, it is found that such minerals, oil and gas are being operated and have been operated for an average of at least 50 days per year during the preceding three (3) year period to commercial advantage, then, and in that event, the said right to mine shall be extended for a further period of five (5) years, but that the right so extended shall be limited to an area of twenty-five acres of land around each well or mine producing, and

each well or mine being drilled or developed at time of first extension, to-wit: April 1, 1945.

Provided, that this said right to mine as previously stated shall be further extended from time to time for periods of five (5) years whenever operation during the preceding five (5) year period has been for an average of 50 days per year during this period, and

Provided that at the termination of *the ten (10) year period of reservation*, if not extended, or at the termination of any extended period in case the operation has not been carried on for the number of days stated, the right to mine shall terminate; and complete fee in the land become vested in the United States.

The reservation of the oil and mineral rights herein made *for the original period of ten (10) years* and for any extended period or periods in accordance with the above provisions shall not be affected by any subsequent conveyance of all or any of the aforementioned properties by the United States of America, but said mineral rights shall, subject to the conditions above set forth, remain vested in the vendors.

Office Supreme Court U. S.

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John Edgar Hoover

Director

The Central Intelligence Agency

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INDEX

	Page
Opinions below.....	1
Jurisdiction.....	1
Question presented.....	2
Statute involved.....	2
Statement.....	2
Argument.....	6
Conclusion.....	13

CITATIONS

Cases:

<i>Brown v. Wright</i> , 137 F. 2d 484.....	10
<i>Carr v. United States</i> , 98 U. S. 433.....	8
<i>Larson v. Domestic & Foreign Commerce Corp.</i> , 337 U. S. 682.....	8
<i>Louisiana v. Garfield</i> , 211 U. S. 70.....	8
<i>Markham v. Allen</i> , 326 U. S. 490.....	7, 12
<i>Mine Safety Appliances Co. v. Forrestal</i> , 326 U. S. 371.....	9
<i>Minnesota v. United States</i> , 305 U. S. 382.....	8, 9, 13
<i>Stanley v. Schwalby</i> , 162 U. S. 255.....	8, 9
<i>United States v. Allegheny County</i> , 322 U. S. 174.....	8
<i>United States v. Bank of New York & Trust Co.</i> , 296 U. S. 463.....	11, 12, 13
<i>United States v. Cain</i> , 72 F. Supp. 897.....	10
<i>United States v. Inaba</i> , 291 Fed. 416.....	10
<i>United States v. McIntosh</i> , 57 F. 2d 573.....	10, 11
<i>United States v. Phillips</i> , 33 F. Supp. 261.....	10
<i>United States v. Prince William County</i> , 9 F. Supp. 219, affirmed, 79 F. 2d 1007, certiorari denied, 297 U. S. 714.....	10
<i>United States v. Shaw</i> , 309 U. S. 495.....	8
<i>United States v. Taylor's Oak Ridge Corp.</i> , 89 F. Supp. 28.....	10
<i>United States v. U. S. Fidelity Co.</i> , 309 U. S. 506.....	8

Statutes:

28 U. S. C. 1345.....	7
22 U. S. C. 2283.....	2

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 616

THE LEITER MINERALS, INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (R. 262-276) is reported in 127 F. Supp. 439. The opinion of the court of appeals (R. 299-305) is reported in 224 F. 2d 381 and also appears at Pet. App. 19-24.

JURISDICTION

The judgment of the court of appeals was entered on June 30, 1955 (R. 306). A timely petition for rehearing was denied on October 14, 1955 (R. 315). The petition for a writ of certiorari was filed on January 9, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Petitioner, The Leiter Minerals, Inc., filed suit in the state court for Plaquemines Parish, Louisiana, against a lessee of the United States and against The California Company, which has an operating agreement with the Government's lessee, to establish its asserted title to the minerals and mineral rights in lands owned by the United States. Thereafter, the United States brought its own action in the federal court against petitioner to quiet its title to the minerals and mineral rights, and, upon application, the federal court, finding that irreparable damage would otherwise result, issued a preliminary injunction restraining further prosecution of the state court proceedings pending determination of the federal court action. The question presented is whether the federal district court had jurisdiction to issue such an injunction.

STATUTE INVOLVED

28 U. S. C. 2283 provides:

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

STATEMENT

Pursuant to a contract of purchase and sale of March 1935, between the United States and the executors and trustees of the Estate of Joseph

Leiter (R. 109-117), Thomas Leiter, as heir of Joseph Leiter, in December 1938 conveyed to the United States approximately 8,711 acres of land in Plaquemines Parish, Louisiana (R. 205-213). The deed contained a mineral reservation (R. 211-212) identical to one contained in the 1935 agreement (R. 112-113), which may be summarized as follows: The grantor reserved until April 1, 1945, the right to mine and remove all valuable minerals. It was further provided that on April 1, 1945, or at the termination of any extension resulting from actual mineral operations, "the right to mine shall terminate, and complete fee in the land [shall] become vested in the United States." No mineral operations within the meaning of the reservation were ever conducted on the land by the vendor or the petitioner or anyone acting under or through them (R. 263).

In March 1949, the United States issued oil and gas leases covering portions of the property to Frank J. Lobrano and to Allen L. Lobrano (R. 132-191). The Lobranos granted the operating rights under these leases to The California Company (R. 47-76). That company has drilled 80 producing wells at an average cost of \$160,000 each (R. 42, 263), and is producing oil and gas in large quantities. The United States has already received more than \$3,500,000 in royalties (R. 263). Any interruption in the operation of these

wells would cause irreparable damage to the United States (R. 263; see also R. 40-44, Pet. App. 24).

In August 1953, petitioner commenced an action against The California Company and Allen J. Lobrano in the Twenty-fifth Judicial District for the Parish of Plaquemines, Louisiana. Its petition or complaint (R. 192-204) asserted (R. 193) that it was the owner of "All of the oil, gas and other minerals, and all of the oil, gas and mineral rights in, on or that may be under" the lands conveyed to the United States by Leiter. Petitioner claimed title (R. 199) by virtue of the mineral reservation in the deed and purported conveyances from Leiter. The complaint filed in the state court also alleged (R. 201):

* * * that the rights of [petitioner] sued upon herein in and to all the oil, gas and other minerals under the lands described * * * are imprescriptible by virtue of Act 315 of the Louisiana Legislature of 1940 (R. S. 9:5806), and that [petitioner] now owns all of the oil, gas and other minerals, and is the owner of all the oil, gas and mineral rights, in, on and under said lands.

The prayer of that complaint (R. 202-203) was for a judgment against The California Company and Lobrano "recognizing" petitioner as the owner of the minerals and mineral rights involved and declaring that as such owner it was

entitled to full and undisturbed possession thereof, and "ordering the defendants * * * to deliver possession of said property to" petitioner. There was a further prayer for an accounting of the minerals removed and a consequent judgment for their value.

In March 1954, the United States commenced the present action in the United States District Court for the Eastern District of Louisiana against petitioner and named as additional parties defendant Lobrano and The California Company. Its complaint (R. 2-19), after stating the substance of the foregoing, averred (R. 16) that the state court suit—

is an attempt by [petitioner] to have the title of the United States of America adjudicated upon directly in that proceeding and to wrest possession of the property away from the United States therein, all to the permanent and irreparable injury and detriment of the United States. The mere pendency of said suit constitutes a threat against, and an interference with, the substantive rights of the United States in the property.

The complaint prayed (R. 18-19), in substance, for a judgment (1) quieting the Government's title to the minerals and mineral rights, (2) canceling, as clouds on that title, the instruments by virtue of which petitioner claimed title, and (3) granting preliminary and permanent in-

junctions against prosecution of the state court suit.

On April 3, 1954, the United States applied for a temporary restraining order against prosecution of the state court suit (R. 22-23). On the same day, the district court granted a 10-day restraining order (R. 33) which thereafter was indefinitely extended (R. 34-35), and on April 6, 1954, petitioner moved to dismiss this suit or to stay proceedings until the state court suit had been terminated, on the ground that the state court had previously assumed jurisdiction "of this controversy" and of the property involved (R. 36-37). A hearing on these motions was held in May 1954, at which hearing evidence establishing the foregoing facts was introduced (R. 77-261). Thereafter, the district court, finding that irreparable damage to the property of the United States would result, filed its opinion (R. 262-276) and order restraining further prosecution of the state court action pending disposition of the instant case (R. 277-278). On appeal this order was affirmed (R. 306).

ARGUMENT

As stated by the court of appeals (Pet. App. 23), "Obviously the controversy as to title is between the appellant [petitioner] and the United States, not between the appellant and the Government's mineral lessees, and from this it follows that the United States is an indispensable party."

Petitioner nowhere questions this statement. On the contrary, it expressly states (Pet. 3) that the "subsidiary" questions upon which this case turns are whether the federal district court below "has exclusive jurisdiction to determine the title of the United States to real property" or whether the United States is required to try its title in the state court proceeding.

Jurisdiction to try the Government's title can exist only in that court which has jurisdiction of the subject matter and of the United States. 28 U. S. C. 1345 confers original jurisdiction on United States District Courts of all civil actions commenced by the United States as plaintiff. Consequently, when the United States instituted the instant action in the federal district court to try the issue of its title, that court, being the one and only court having jurisdiction of the United States and of the subject matter, acquired exclusive jurisdiction. As stated by the district court (R. 272), "All the parties necessary to make this determination are before this court. The United States, an indispensable party insofar as the state proceedings seek to adjudicate title to the property, is not before the state court." This exclusive jurisdiction of the district court is not, of course, affected by the circumstance that on the merits a question of state law may be involved. *Markham v. Allen*, 326 U. S. 490, 495. Accordingly, petitioner's assertion (Pet. 13-14) that a

question of Louisiana law is involved is irrelevant to the question in hand.¹

It follows, as the courts below have held, that the state court, not having jurisdiction of the United States, did not acquire jurisdiction to determine the title of the United States. This Court has uniformly held that where the title of the United States is the issue, or where a suit is against federal property, the United States is an indispensable party, and that the suit, while nominally against federal officers or agents, is in fact against the United States, and must be dismissed for lack of jurisdiction, absent the consent of Congress to the action. *Stanley v. Schwalby*, 162 U. S. 255; *Minnesota v. United States*, 305 U. S. 382; *Carr v. United States*, 98 U. S. 433; *United States v. Shaw*, 309 U. S. 495; *United States v. U. S. Fidelity Co.*, 309 U. S. 506; *Louisiana v. Garfield*, 211 U. S. 70; *Larson v. Domestic & Foreign Commerce Corp.*, 337 U. S. 682;

¹ While the merits of this case are not here involved, we deem it appropriate to point out that the Government's title to the minerals is not founded upon Louisiana law, but on an express contract of the United States and resulting deed, and that the construction of that contract, and the title which it creates, "present questions of federal law not controlled by the law of any State." *United States v. Allegheny County*, 322 U. S. 174, 183. There may also be constitutional questions in regard to the validity and effect of the Louisiana statute.

Mine Safety Appliances Co. v. Forrester, 326 U. S. 371.²

The above-cited cases, of course, dispose of petitioner's basic contention that by the mere filing of its action in the state court it can compel the United States to submit itself as a defendant and its property to the jurisdiction of that court. Since Congressional consent is the *sine qua non*, and since it is lacking here, not even the Attorney General of the United States has authority to bring the Government in as a party defendant in the state court suit. *Stanley v. Schwalby*, 162 U. S. 255, 270; *Minnesota v. United States*, 305 U. S. 382, 389.

The federal district court having exclusive jurisdiction, and the state court having none, and both courts below having found (R. 272, Pet. App. 24) that irreparable damage to the United States would result if its lessees should be ousted of possession, the district court's stay of proceedings in the state court to preserve the *status quo* was not only appropriate, but was clearly not prohibited by 22 U. S. C. 2283, since it is unques-

² Petitioner's attempt (pp. 11-12) to dispose of these cases on the assertion that the "priority-of-jurisdiction" rule was not there involved is unavailing. Obviously these decisions apply to petitioner's Louisiana proceeding, as well as to any other suit wherein an attempt is made to adjudicate the Government's title to its property without its consent.

tionably "necessary in aid of its [the district court's] jurisdiction, or to protect or effectuate its judgments." In similar situations the federal courts have hitherto followed this practice to protect the Government's interest. *United States v. McIntosh*, 57 F. 2d 573, 576-578 (E. D. Va.); *United States v. Cain*, 72 F. Supp. 897, 899 (W. D. Mich.); *United States v. Phillips*, 33 F. Supp. 261 (N. D. Okla.); *Brown v. Wright*, 137 F. 2d 484, 488 (C. A. 4); *United States v. Taylor's Oak Ridge Corp.*, 89 F. Supp. 28 (E. D. Tenn.); *United States v. Prince William County*, 9 F. Supp. 219 (E. D. Va.), affirmed, 79 F. 2d 1007, (C. A. 4), certiorari denied, 297 U. S. 714; *United States v. Inaba*, 291 Fed. 416, 417 (E. D. Wash.).

2. Petitioner makes no serious attempt to meet the conclusion of both courts below that the federal district court has exclusive jurisdiction, and it makes no pretense at showing that this conclusion is not fully supported by the decisions of this Court relied on below. Instead, it largely ignores those holdings and asserts that, under the rule of comity between courts, the United States is remitted to the state court proceeding. But, as the court of appeals observed (Pet. App. 24), "The rule as to *in rem* actions which appellant invokes is predicated upon principles of comity between State and Federal courts of concurrent jurisdiction, and it has no application here because the District Court, wherein the United States is plaintiff, has exclusive jurisdiction to determine

the title of the United States to the minerals and mineral rights claimed by the appellant." And as pointed out in the very similar case of *United States v. McIntosh*, 57 F. 2d 573, 577 (E. D. Va.), the real purpose of the anti-injunction statute, i. e., avoidance of conflict between courts, would be defeated in cases of exclusive federal jurisdiction if prosecution of the state court proceeding were not stayed, "because the federal case *must* go on * * * and, if the state court case also goes on, confusion and possible clashes might unfortunately occur."

The principal authority invoked by petitioner (Pet. 8-12), *United States v. Bank of New York & Trust Co.*, 296 U. S. 463, was, of course, carefully considered by both courts below (R. 273-275, Pet. App. 23-24) and held not to support petitioner's position. There, the subject matter of the action was a privately owned fund constituting assets of three dissolved Russian insurance companies. The state court had in 1925 appointed a liquidator who deposited the funds in banks designated by the court and the funds were held subject to appropriate orders of that court for distribution to creditors. In 1933 the Soviet Government assigned its interest in the funds to the United States, and the federal government thereafter sued in the federal court to establish title to and obtain possession of the funds. This Court affirmed a dismissal upon the ground that the state court had first acquired jurisdiction and

control over the entire fund and that continuation of such control was necessary to protect the rights of claimants in the state court proceeding.

The conclusion there was based on facts not present here. There, a true *res* was validly under the control of the state court at a time when the United States had not the slightest interest in it or claim to it, and the Government acquired no interest until eight years later. And the interest it claimed was adverse to those of the other claimants to the fund, so that its relation to the state court suit was essentially that of a plaintiff rather than that of a defendant. Here, title to and possession of the property has been in the United States since 1938, 15 years before petitioner filed its state court action, and the Government's claim of title to the minerals matured eight years before such action was instituted. Furthermore, the rights of the defendants in the state court suit, who are the Government's lessees, depend on the Government's title, and the Government could not be properly considered as a plaintiff.

Another obstacle to federal jurisdiction, relied upon by this Court in the *Bank of New York* case (296 U. S., p. 480), was that other claimants were already before the state court, were entitled to be heard, were indispensable parties to any proceeding for disposition of the funds, and were not parties to the federal court action. The reverse is true here, since the federal court is the only court having jurisdiction of all parties. See *Markham*

v. *Allen*, 326 U. S. 490. It is plain that a ruling that the acquisition by the United States of a claim to a fund eight years after the fund was validly in the control of the state court and in process of being adjudicated could not operate to oust the state court of jurisdiction lends no support to petitioner's contention. Requiring the Government, without its consent, to litigate, as a defendant in a state court, the title to its property, with a corresponding denial of its right to litigate that title in its own courts as a party plaintiff, is not justified on any basis, and is not, we submit, supported by anything said or decided in the *Bank of New York* case. Cf. *Minnesota v. United States*, 305 U. S. 382, 388.

CONCLUSION

The decision of the court below is correct. There are no conflicts of decision, and further review is not warranted. The petition for a writ of certiorari should, therefore, be denied.

Respectfully submitted.

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 26

THE LEITER MINERALS, INC.,

Petitioner,

versus

UNITED STATES OF AMERICA, ET AL.,

Respondents.

**ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT.**

**BRIEF FOR THE CALIFORNIA COMPANY AND
ALLEN L. LOBRANO, RESPONDENTS.**

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INDEX—(Continued)

Page

III. THE UNITED STATES HAS GOOD AND CLEAR TITLE TO THE DISPUTED MINERAL RIGHTS.

Leiter's mineral reservation expired by its own terms on April 1, 1945. Louisiana Act 315 of 1940 has no bearing in this case and does not purport to alter or strike down the United States' contract as contended by Leiter

19

The United States District Court for the Western District of Louisiana has upheld the rights of the United States under a similar reservation

32

The Plaquemines Parish Court patently erred in ruling that only Leiter's right to enter expired on April 1, 1945:

(1) The reservation expressly stated that "complete fee in the land" would become vested in the United States on April 1, 1945, thereby leaving no room for any outstanding rights in Leiter.

(2) If one cannot enter, one cannot mine and remove

34

IV. THE INJUNCTION BELOW WAS A PROPER REMEDY:

The prohibition of Section 2283 of the Judicial Code does not apply to the United States. The injunction below is supported by United States v. Lee, Land v. Dollar, and

INDEX—(Continued)

Page

numerous precedents in the lower Federal courts. No rule of comity requires denial of Federal jurisdiction in favor of the State Court so that it can proceed against property of the United States. Nor has the State Court ever taken this property into its possession or custody

36

No purpose would be served by petitioner's proposed abandonment of jurisdiction to the State Court. Louisiana Act 315 of 1940 clearly does not apply, and the impossible interpretation which Leiter advocates would be unconstitutional against the United States. This case presents the reverse of the "doctrine of abstention" cases relied on by petitioner

42

United States v. Bank of New York & Trust Co. did not involve a suit against the United States and cannot be made the basis for compelling the United States to litigate the title to any of its properties in any state court selected by an adverse claimant

44

The sovereignty of the United States under our Federal system of government requires that title to the national properties be litigated in, and, where necessary, protected by, the United States Courts

48

V. CONCLUSION:

Petitioner concedes no State Court decree would be res judicata against, or binding

INDEX—(Continued)

	Page
upon, the United States. The injunction below was necessary to preserve the status quo until a final and binding decision can be rendered in the United States Courts	51
Appendix A—Louisiana Act 315 of 1940	53

TABLE OF CITATIONS

1. Cases

Allison v. Maroun, 193 La. 286, 190 So. 408	11
Amalgamated C. W. of America v. Richman Bros., 348 U. S. 511	38
Arizona v. California, 298 U. S. 558	15
Arnold v. Sun Oil Co., 218 La. 50, 48 So. (2d) 369	10
Bodcaw Lumber Co. v. Magnolia Petroleum Co., 167 La. 847, 120 So. 389	27
Brown v. Wright, 137 F. (2d) 484 (C. C. A. 4)	37
Byrne v. Hebert, 51 La. Ann. 548, 25 So. 586	9, 13
Campbell v. Hart, 118 La. 871, 43 So. 533	11
Carr v. United States, 98 U. S. 433	46
Coyle v. North American Oil Consolidated, 201 La. 99, 9 So. (2d) 473	10
Cupples v. Harris, 202 La. 336, 11 So. (2d) 609	9
Desoto's Heirs v. Standard Oil Co., 139 La. 965, 72 So. 695	12
Dixon v. American Liberty Oil Co., 226 La. 911, 77 So. (2d) 533	10
Dreux v. Kennedy, 12 Rob. (La.) 489	12, 13
Frost-Johnson Lumber Co. v. Salling's Heirs, 150 La. 756, 91 So. 207	23

1. Cases—(Continued)

	Page
Frost Lumber Industries v. Republic Production Co., 112 F. (2d) 462 (C. C. A. 5), cert. den., 311 U. S. 676	23
Gulf Refining Company v. Price, 232 F. (2d) 25	15
Hickman v. United States, 135 F. Supp. 919 (W. D. La.)	32, 33
Hodges v. Norton, 200 La. 614, 8 So. (2d) 618	26
Ideal Savings & Homestead Ass'n. v. Gould, 163 La. 442, 112 So. 40	11
Jewell v. DeBlanc, 110 La. 810, 34 So. 787	12
Keebler v. Seubert, 167 La. 901, 120 So. 591	23
King v. United Commercial Travelers, 333 U. S. 153	35
Land v. Dollar, 330 U. S. 731	39, 40
Larson v. Domestic & Foreign Commerce Corp., 337 U. S. 682	10
Lawrence v. Sun Oil Co., 166 F. (2d) 466 (C. C. A. 5)	11, 13
Lenard v. Shell Oil Co., 211 La. 265, 29 So. (2d) 844	24
Long-Bell Petroleum Co. v. Tritico, 216 La. 426, 43 So. (2d) 782	23
Louisiana v. Garfield, 211 U. S. 70	15
Mandeville v. Canterbury, 318 U. S. 47	41
Martin v. Hunter's Lessee, 1 Wheat. 303	49, 50
Mine Safety Appliances Co. v. Forrestal, 326 U. S. 371	15
Minnesota v. United States, 305 U. S. 382	39, 47
Patton v. Frost Lumber Industries, 176 La. 916, 147 So. 33	24
Pino v. Dufgur, 174 La. 227, 140 So. 31	12
Plummer v. Schlatre, 4 Rob. (La.) 29	13

1. Cases—(Continued)

	Page
Skeen v. Lynch, 48 F. (2d) 1044 (C. C. A. 10), cert. den., 284 U. S. 633	14
Smith v. Chappell, 177 La. 311, 148 So. 242	9
Stanley v. Schwalby, 162 U. S. 255	9, 47
State of Utah v. Work, Secretary of Interior, 6 F. (2d) 675, aff., 273 U. S. 649	15
State of Washington v. U. S., 87 F. (2d) 421 (C. C. A. 9)	14
Tennessee v. Davis, 100 U. S. 257	49, 50
Terrett v. Brossett, 34 So. (2d) 671	12
Texas Co. v. Crawford, 212 F. (2d) 722	27
United States v. Babcock, 6 F. (2d) 160 (D. C., Ind.) modified, 9 F. (2d) 905 (C. C. A. 7)	37
United States v. Bank of New York & Trust Com- pany, 296 U. S. 463	44, 45
United States v. Cain, 72 F. Supp. 897 (W. D. Mich.)	37
United States v. Inaba, 291 F. 416 (E. D. Wash.)	37
United States v. Lee, 106 U. S. 196	39
United States v. McIntosh, 57 F. (2d) 573 (E. D. Va.)	37
United States v. N. Y. Rayon Importing Co., 329 U. S. 654	39, 47
United States v. Nebo Oil Company, 190 F. (2d) 1003 (C. C. A. 5)	30, 44
United States v. Phillips, 33 F. Supp. 261, (N. D. Okla.), vacated on other grounds, 312 U. S. 246	37
United States v. Shaw, 309 U. S. 495	39, 47
United States v. Taylor's Oak Ridge Corporation, 89 F. Supp. 28 (E. D. Tenn.)	37

1. Cases—(Continued)

	Page
United States v. U. S. F. & G. Co., 309 U. S. 506	47
United States v. United Mine Workers, 330 U. S. 258	36
Whitney National Bank v. Little Creek Oil Co., 212 La. 949, 33 So. (2d) 693	43
Young v. Chamberlin, 15 La. Ann. 454	13

2. United States Statutes

Section 2283 of the Judicial Code, 62 Stat. 968 (28 U. S. C., § 2283)	36, 37, 38
Norris-LaGuardia Act, 47 Stat. 70 (29 U. S. C., § 101)	37
The Migratory Bird Conservation Act, 45 Stat. 1222	50

3. Louisiana Statutes

Act 315 of 1940	8, 22, 23, 28, 30, 31, 42, 43
-----------------	-------------------------------

Louisiana Civil Code:

Article 783 (6)	26
Article 789	23
Article 821	26
Article 3457	24
Article 3470	24
Article 3546	23

Louisiana Code of Practice:

Article 43	11
Article 44	9
Article 575	18
Article 577	18

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BRIEF FOR THE CALIFORNIA COMPANY AND
ALLEN L. LOBRANO, RESPONDENTS.

PRELIMINARY STATEMENT.

The California Company and Allen L. Lobrano are the named defendants in the State Court litigation which attacks the title of the United States and seeks to evict these named defendants from property which they possess

for the United States as its mineral lessees. Because the rights of The California Company and Allen L. Lobrano are very valuable, and will be directly affected by the decision of this Court, these parties desire to protect their interests by independent brief. Moreover, petitioner's case is founded upon erroneous contentions as to Louisiana law, and an independent brief by Louisiana practitioners is deemed advisable on that account also.

SUMMARY OF ARGUMENT.

I. The Plaquemines Parish suit, though nominally against the United States' mineral lessees, is actually against the United States. Leiter there claims to own the disputed mineral rights by a reservation against the United States and it asks the State Court to decree that its title is good and the United States' title is bad. Under Louisiana law, these mineral lessees stand in the shoes of the United States. Their possession is, in State law, the possession of the United States and the challenge of the State Court complaint runs directly to the United States itself.

The Louisiana statutes and decisions are clear that the State Court litigation is against the United States. The State holdings are that the lessor is the only one who can stand in judgment on the issue of title, since a lessee does not claim title in itself and holds possession only for, and under, its lessor. The lower Federal decisions agree.

II. The threat by the State Court suit to the interests of the United States is direct and immediate. At the hearing in the District Court more than two years ago there were eighty producing oil wells on the property and the United States had already received more than

\$3,500,000.00 in royalty. This oil field is operated on a gas injection method whereby sub-surface pressures are controlled so as to achieve maximum production. Even a slight and temporary interruption in this program would result in serious loss of recoverable oil and whole segments of the underground reservoir might be damaged irretrievably. Due to the complicated nature of the operation, control could not be shifted from the United States' mineral lessees even to equally responsible operators without serious and irreparable damage. Any shut-down of the wells, no matter how brief, would result in permanent loss of recoverable oil. Also, the hazards of oil and gas production are such that unless the most careful and prudent practices are followed in day-to-day operations extensive and permanent loss of recoverable oil will result. All these damages, from their very nature, would be difficult to establish with precision, and the United States would have no reasonable expectation of collecting them from petitioner.

III. The title of the United States to the disputed mineral rights is good and clear. The United States acquired the property under contract dated March 14, 1935, followed by deed dated December 21, 1938. Leiter's mineral reservation against the United States, set forth in those instruments, expired by its express terms on April 1, 1945. That reservation said that the reserved rights might be extended only if Leiter conducted mineral operations "to commercial advantage" within the original term, and any such extensions would be limited to twenty-five acres around each producing or operating well. Other significant requirements and limitations were imposed. Leiter conducted no operations whatsoever in compliance with these requirements. Instead, Leiter avers that the re-

served mineral rights, notwithstanding the contractual requirements and limitations, became perpetually vested in it by subsequent Louisiana Statute, Act 315 of 1940. But that Statute was concerned solely with a statute of limitation, or prescription, under Louisiana law, whereby mineral rights, no matter what their contractual terms, must be exercised every ten years to stay alive. The right to take the minerals in Louisiana constitutes a mere servitude or easement, which becomes lost by ten years non-user. Louisiana law gives absolute freedom to contract with respect to the terms of mineral reservations and all such provisions are enforced as written subject only to this statute of limitation, or prescription, which requires that the rights be exercised at least once every ten years. Act 315 of 1940 did not attempt to alter or strike down contractual requirements and limitations such as those in the United States' contract with Leiter; by its plain wording, this State Law does nothing more than prohibit the legal statute of limitation, or prescription, from running in favor of the United States.

The United States District Court for the Western District of Louisiana has upheld the position of the United States under a comparable reservation. *Hickman v. United States*, 135 F. Supp. 919, 140 F. Supp. 759.

IV. The injunction below was a proper remedy. The restrictions of Section 2283 of the Judicial Code do not apply against the United States. *United States v. United Mine Workers*, 330 U. S. 258. Leiter's position to the contrary is wholly predicated on *Amalgamated C. W. of America v. Richman Bros.*, 348 U. S. 511, but in that case the United States was neither plaintiff nor a party. Since the Plaquemines Parish Court had no power to en-

tain a suit against the United States, the Court below, on the filing of the complaint by the United States, became the only court with proper jurisdiction to determine the controversy. Petitioner necessarily admits this when it concedes the State Court could not render a judgment that would be *res judicata* on the rights of the United States (Brief, p. 30).

The injunction below was authorized by express declaration in *United States v. Lee*, 106 U. S. 196, and was consistent with the injunction more recently sanctioned by this Court in *Land v. Dollar*, 341 U. S. 737.

Whereas Leiter urges that principles of comity between state and Federal courts should favor relinquishment of jurisdiction to the State Court, these rules of comity have never been applied except where the choice of jurisdiction between state and Federal courts was otherwise equal. These rules of comity, even between private parties, would not apply here since the State Court has never undertaken to exercise possession or control over the property. *Mandeville v. Canterbury*, 318 U. S. 47. And, in any event, the United States Courts necessarily have jurisdiction to protect the property of the United States.

Nor is Leiter correct in arguing that the "doctrine of abstention" in favor of state courts, where the constitutionality of state statutes is attacked, applies. Louisiana Act 315 of 1940, to which Leiter points, has no bearing in this case. Such statute did not purport to affect, much less strike down and annul, the provisions of the United States' purchase agreement, and Leiter's attempt to apply the statute is entirely without substance.

If the State Courts agreed the statute has no application, Leiter's whole claim is without merit. If, on the other hand, the State Courts were to adopt the impossible interpretation proposed by Leiter, the statute would be unconstitutional. Either way, Leiter could not be successful. This case is the reverse of the "doctrine of abstention" cases. There, state courts were given first opportunity to interpret so as to eliminate constitutional questions. Here, petitioner asks the State Courts be given this first opportunity so as to create constitutional questions. No purpose would be served by sending this case to the State Courts solely to see if they might render an unconstitutional interpretation.

United States v. Bank of New York & Trust Company, 296 U. S. 463, heavily relied on by Leiter, did not involve a suit against the United States. Long before any claim by the United States arose, the funds there in dispute had been in possession of the state court authorities and were subject to their actual administration and control. But down in Plaquemines Parish the State Court has never taken the property into custody or made any move to do so. Also, in *Bank of New York* the State Superintendent of Insurance was attempting to disburse the funds to their rightful owners and was not denying the rights of anyone, particularly the United States. Under those circumstances, the liquidation proceedings were held not to be a suit against the United States. On the other hand, in the case at bar Leiter is endeavoring to wrest away from the United States specific property which is now, and for many years has been, in the exclusive possession of the United States.

Leiter's contention that in reliance on the *Bank of New York* case the United States might "intervene" in the State Court, without becoming a "defendant", is at odds with the fact that the suit there is already against the United States, and the title and possession attacked in the State Court are the title and possession of the United States. Merely calling the United States an intervenor instead of a defendant cannot be made the pretext for compelling the United States to litigate the title to any of its properties in any of the state courts without its consent.

Finally, the sovereignty of the United States under our Federal system of government requires that the title of the United States to the national properties be litigated in and, where necessary, protected by the United States Courts. The interests of the United States could not be adequately protected if the hands of the United States were tied in the United States Courts while its title and possession were litigated in the forum of another sovereign where it cannot be made a party.

Leiter Minerals has no investment at stake. Leiter has been out of possession for many years while the property was being developed by the United States' mineral lessees. The United States and its mineral lessees have everything to lose if they should be temporarily evicted only to be restored to possession at a later date. No final and binding decision on the title of the United States can be made by the State Court. Leiter concedes this when it acknowledges that any State Court decree in Plaquemines Parish "would not have the effect of *res judicata* against the Government". (Petitioner's brief, p. 30). Con-

tinuation of the State Court case can accomplish nothing and the injunction below was necessary to preserve the *status quo* until the controversy can be settled in the only courts with the power to make a final decision binding on all interested parties.

I.

THE PLAQUEMINES PARISH SUIT AGAINST THE UNITED STATES' MINERAL LESSEES. IS A SUIT AGAINST THE UNITED STATES.

The complaint asks the State Court to adjudicate the title of the United States and the State Court would be required by Louisiana law to do so.

In its State Court complaint Leiter Minerals claims to own the disputed mineral rights adversely to the United States: it avers that the defendant mineral lessees of the United States are, and for some time have been, producing from the property without right oil and gas in large quantities; it declares that the mineral rights in the property belong to it by reservation against the United States made December 21, 1938 and later rendered "imprescriptible" by Louisiana Act 315 of 1940; and it avers that the United States acquired the property solely for a game refuge without paying any separate consideration for the mineral rights. The prayer of such State Court complaint is that Leiter Minerals be decreed the "fee simple, true and lawful owner" of the disputed mineral rights; that the defendant mineral lessees of the United States be ordered to deliver possession; and that plaintiff, Leiter, there have a money judgment for the value of all of the oil and gas that have been removed. (Ex. U. S. 15, R. 101, 50).

Petitioner, Leiter Minerals, concedes that its State Court suit, with the above allegations and prayer, is a Louisiana petitory action. (Brief, p. 5). Louisiana has different forms of actions which must be used in accordance with the circumstance of possession. A petitory action is an action to try title brought by an adverse claimant out of possession against a defendant in possession. The one, essential requirement of this form of action is that the plaintiff establish good title. Article 44 of the Louisiana Code of Practice so provides:

"The plaintiff in an action of revendication must make out his title, otherwise the possessor, whoever he be, shall be discharged from the demand."

The Louisiana decisions enforce this requirement, and insist that the plaintiff in every petitory action not only allege, but prove, good title. *E. g.*, *Cupples v. Harris*, 202 La. 336, 11 So. (2d) 609; *Smith v. Chappell*, 177 La. 311, 148 So. 242. It would be impossible under Louisiana law for the State Court to give Leiter any relief whatsoever without first deciding the title issue adversely to the United States. *Byrne v. Hebert*, 51 La. Ann. 548, 25 So. 586.

In *Stanley v. Schwalby*, 162 U. S. 255, a State Court suit was held to be against the United States for the reason that the complaint, though nominally against certain individuals, sought an adjudication on the title of the United States. This Court stated that the judgment thereon "was directly against the United States and against their property, and not merely against their officers." 162 U. S. at p. 272. And the rule so laid down was most re-

cently approved in *Larson v. Domestic & Foreign Commerce Corp.*, 337 U. S. 682, where it was said:

"The request for an adjudication of the validity of the sale was thus, even in form, a request for an adjudication against the sovereign. Such a declaration of the rights of the respondent vis-a-vis the United States would clearly have been beyond the Court's jurisdiction. See *Stanley v. Schwalby*, 162 U. S. 255, 40 L. Ed. 960, 16 S. Ct. 754 (1896)." 337 U. S. at p. 689, fn. 9.

The State Court defendants are sued in their capacity of mineral lessees of the United States, and the possession of these mineral lessees is, in State law, the possession of the United States.

In the State Court, The California Company and Allen L. Lobrano are, by specific allegation, sued in their capacity of mineral lessees of the United States. (Art. 5, Ex. U. S. 15, R. 101, 50). These lessees are called to answer for doing those very acts and things which the United States authorized them to do. In Louisiana, an oil and gas lessee has no separate estate from the lessor but merely a contractual right to explore for minerals in return for the payment of rent (royalty); and the rule of the Louisiana Civil Code on ordinary farm leases are applied by the courts to oil and gas leases. *Dixon v. American Liberty Oil Co.*, 226 La. 911, 922, 77 So. (2d) 533, 537; *Arnold v. Sun Oil Co.*, 218 La. 50, 147, 48 So. (2d) 369, 402; *Coyle v. North American Oil Consolidated*, 201 La. 99, 114, 9 So. (2d) 473, 478. The possession of lessees is, under Louisiana law, possession of and for the lessor,

and such lessees can acquire no adverse title to the lessor. *Ideal Savings & Homestead Ass'n. v. Gould*, 163 La. 442, 451, 112 So. 40, 43; *Campbell v. Hart*, 118 La. 871, 882, 43 So. 533, 536. This rule is applicable to mineral lessees as well as farm lessees. *Lawrence v. Sun Oil Co.*, 166 F. (2d) 466, 470 (C. A. 5); *Allison v. Maroun*, 193 La. 286, 293, 190 So. 408, 410.

Inescapably, therefore, the challenge laid down by the State Court complaint also runs directly to the United States as the party in possession through its mineral lessees.

Under the Louisiana statutes and decisions the State Court litigation is against the United States. The Federal decisions from Louisiana and other states are unanimous to the same result.

Article 43 of the Louisiana Code of Practice provides:

"The petitory action, or one by which real property; or any immovable right to such property may be subjected, is claimed, must be brought against the person, who is in the actual possession of the immovable, even if the person having the possession be only the farmer or lessee.

"But if the farmer or lessee of a real estate be sued for that cause of action, he must declare to the plaintiff the name and residence of his lessor, who shall be made a party to the suit, if he reside in the State, or is represented therein,

and who must defend it in the place of the tenant, who shall be discharged from the suit." (Emphasis added).

This article shows the suit is against the lessor by requiring that he come in and defend the suit. And apart from the article, the Louisiana decisions hold that the lessor is the only one who can stand in judgment as to title. In *Pino v. Dufour*, 174 La. 227, 231, 140 So. 31, 32, the Louisiana Supreme Court said, in regard to a title suit against a lessee, that the issue of title "must be determined contradictorily with the adverse claimant of title", the lessor; in *Desoto's Heirs v. Standard Oil Co.*, 139 La. 965, 966, 72 So. 695, 696, the Louisiana Supreme Court said that it was incumbent upon the adverse claimants "to cite the lessors for litigating the issue of title, which these lessors alone are qualified to litigate"; in *Jewell v. De-Blanc*, 110 La. 810, 821, 34 So. 787, 791, the Louisiana Supreme Court said that a tenant was "not competent to stand in judgment upon the issue of ownership" and that the lessor was "the actual defendant"; and in *Terrett v. Brossett*, 34 So. (2d) 671, 672, the Louisiana Court of Appeal has also held the lessor a necessary party to a title dispute.

Against these authorities, Leiter relies on *Dreux v. Kennedy*, 12 Rob. (La.) 489, decided in 1846. While that old case permitted a petitory action against persons in charge of the former United States mint at New Orleans, such result is not the law of Louisiana today. The cases cited above make this clear, and the following history makes it even clearer. *Dreux v. Kennedy* was decided by the Louisiana Court in reliance upon its earlier decision

in *Plummer v. Schlatre*, 4 Rob. (La.) 29, which had held that a petitory action could be maintained against a lessee standing alone whenever the lessor resided out of the State and was not amenable to suit. But this holding of *Plummer v. Schlatre* was subsequently and permanently rejected in *Young v. Chamberlin*, 15 La. Ann. 454, and *Byrne v. Hebert*, 51 La. Ann. 548, 25 So. 586; and when *Plummer v. Schlatre* fell, *Dreux v. Kennedy* necessarily fell with it. The reasoning of these later cases, and especially of *Byrne v. Hebert*, is wholly incompatible with *Dreux v. Kennedy*:

"... We know of no law authorizing a lessee as such to stand in judgment on a question of title on behalf of his lessor, whether the latter be a resident of the State or an absentee; in either case he should be made a party to the suit—if present or represented he should be made a party either personally or through his authorized representative—if absent, by a curator ad hoc, under Articles 116 and 963 of the Code of Practice." 51 La. Ann. at p. 556; 25 So. at p. 589.

In *Lawrence v. Sun Oil Co.*, 166 F. (2d) 466, the Court of Appeals for the Fifth Circuit held that just such a Louisiana petitory action as Leiter's is in fact a suit against the mineral lessor, though brought solely against the lessee; and the Court of Appeals dismissed that case for want of jurisdiction, over the lessor. The reasoning employed by Judge Lee (of the Louisiana Bar) was as follows:

"A petitory action has for its purpose not only the establishment of title by the owner out of

possession but through court decree the obtaining of possession. The lessor, therefore, is vitally interested not only in maintaining his title, but in maintaining his possession. And as the lessor through his tenant is the real possessor, he is the proper one to be heard, and under the codal article must be brought in and given that opportunity. Notwithstanding Act No. 205 of 1938, codal articles dealing with ordinary leases still apply to oil, gas and mineral leases, in proper cases. *Tyson v. Surf Oil Co.*, supra." 166 F. (2d) at p. 470.

Similar reasoning was employed by Judge Borah (likewise of the Louisiana bar) in writing the decision of the Court of Appeals in the instant case:

"Obviously the controversy as to title is between the appellant and the United States, not between the appellant and the Government's mineral lessees, and from this it follows that the United States is an indispensable party. The appellant can obtain effective relief with respect to title only against it." 224 F. (2d) at p. 384.

Other circuits have equally held that lessors are indispensable parties to title suits against lessees. *Skeen v. Lynch*, 48 F. (2d) 1044 (C. C. A. 10), cert. den., 284 U. S. 633; *State of Washington v. U. S.*, 87 F. (2d) 421 (C. C. A. 9). *Skeen v. Lynch* is comparable to the case at bar, since it dismissed, for lack of jurisdiction, a title suit against mineral licensees of the United States.

Whereas *Leiter* urged in its supplemental brief on petition for certiorari, and still urges, that the Court

of Appeals for the Fifth Circuit, in its February 2nd, 1956 decision of *Gulf Refining Company v. Price*, reached a result inconsistent with the foregoing authorities, it is no longer necessary to consider that contention. That Court, on April 6th, 1956, subsequently to the grant of certiorari, withdrew completely its February 2nd opinion in the *Price* case and substituted a wholly new opinion in which the following statement is made:

"... It cannot be said that where defendants are not sued as and do not appear as lessees, that the rights granted by Art. 43 of La. Code of Practice can be availed of, or that any rights of any lessor can be affected if the litigation involves none of its lessees. (See *Lawrence v. Sun Oil Co.*, 166 F. (2d) 466, for discussion of Art. 43 and indispensable parties.)" 232 Fed. (2d) 25, 30.

This reference by the Court of Appeals to its prior decision in *Lawrence v. Sun Oil Co.*, discussed above, makes it clear that there has been no change in the views of the Fifth Circuit, consistent with the decisions in other circuits, that the lessor is the real defendant in, or an indispensable party to, a title action against its lessee.

That rule is further consistent with numerous decisions by this Court itself, in situations other than the lessor-lessee relationship, holding that the United States is an indispensable party to any action affecting its title or rights, and that all such suits fail for lack of jurisdiction. *Louisiana v. Garfield*, 211 U. S. 70; *State of Utah v. Work, Secretary of Interior*, 6 F. 2d 675, aff. 273 U. S. 649; *Arizona v. California*, 298 U. S. 558; *Mine Safety Appliances Co. v. Forrestal*, 326 U. S. 371.

II.

THE THREATENED TEMPORARY EVICTION OF THE UNITED STATES' MINERAL LESSEES IN PLAQUEMINES PARISH WOULD EFFECT PERMANENT AND IRREPARABLE DAMAGE TO THIS VERY VALUABLE MINERAL PROPERTY OF THE UNITED STATES.

Leiter asks the State Court to evict the United States' mineral lessees. This eviction, though it might be but temporary, would be certain to result in substantial and permanent damage, possibly even enormous damage, to the interests of the United States.

The value of the property rights at stake appears from the fact that, when the hearing was held in the District Court more than two years ago, the United States had already received royalty in excess of \$3,500,000.00. Since this royalty is $12\frac{1}{2}\%$, total production then exceeded \$28,000,000.00. Eighty producing oil and gas wells had been completed at an average cost of \$160,000.00 apiece. (Ex. U. S. 13, R. 28, 49).

The nature of oil and gas production from this particular field is such that the wells of the United States' mineral lessees could not be shut down even temporarily without permanent loss of future production. That is especially true here because the wells are being produced under a gas injection method whereby subsurface pressures are controlled for maximum possible benefit. This gas injection method is a complicated endeavor, based upon studies and analyses of underground data obtained by the United States' mineral lessees in conducting their

drilling operations on the property. The evidence establishes that, under the circumstances, not even the most experienced and competent outside operator could be substituted for the United States' mineral lessees without permanent and irretrievable loss of recoverable oil. (Ex. U. S. 13, R. 28, 49).

Moreover, should there be any interruption of production from the wells situated on the property, oil wells now producing some water with the oil, of which there are a considerable number, would probably be flooded out beyond their ability to produce oil again. Oil would also be forced by water drive into the gas cap of the reservoir, causing loss of producible oil, and many wells would become sandied or loaded up with water, resulting at the least in expense and delay in placing them back on production. Also, oil wells situated in Main Pass of the Mississippi River, from which the United States does not receive any royalty, would, in the event of an interruption, effect drainage of oil from the United States' lands. (Ex. U. S. 13, R. 28, 49).

The proof further is that oil and gas operations are attended with numerous hazards and, unless the most careful and prudent practices are observed, wells may blow out or other things happen by which the capacity of the subsurface structure to produce can be extensively damaged and whole segments of the underground reservoir rendered worthless. (Ex. U. S. 13, R. 28, 49).

Leiter's suit in Plaquemines Parish threatens these consequences regardless of the final decision on the title of the United States. For, petitioner concedes that the

Plaquemines Parish case "would not have the effect of *res judicata* against the Government". (Brief, p. 30). Thus, if the United States' mineral lessees were temporarily evicted in Plaquemines Parish only to be restored to possession at a later date by the Federal Courts, the interim damage would have been needless. The United States would have no effective recourse against petitioner for these damages. The record shows petitioner's claim to these mineral rights was conveyed to it for stock, and obviously petitioner is wholly unable to respond in damages of the amount its suit threatens. Nor would these damages be of a readily ascertainable or provable type.

Petitioner's suggestion that the United States' mineral lessees might take a suspensive appeal in the State Court really begs the entire question. The jurisdiction of the United States Courts does not depend upon the presence or absence of the right to a supersedeas in the State Courts. But in any event, the suggestion is specious. A supersedeas bond under Louisiana law would be fixed at one and one-half times the values of the past production and the estimated future production during the course of the litigation, plus such additional amount as the State Court might in its discretion fix in order to secure against possible injury to the property. (Arts. 575 and 577 of the Louisiana Code of Practice). The value of the production to date and the probable value of future production are such that the bond to be required could well lie beyond the reach of the United States' mineral lessees. The cost of the bond alone would no doubt be counted in millions of dollars. Surely, the rights of the United States and the protection of its properties cannot be made to depend upon uncertain and vicarious action such as the posting of this bond.

III.

**THE UNITED STATES HAS GOOD AND CLEAR TITLE
TO THE DISPUTED MINERAL RIGHTS.**

Leiter's mineral reservation expired by its own terms on April 1, 1945. Louisiana Act 315 of 1940 has no bearing in this case and does not purport to alter or strike down the United States' contract as contended by Leiter.

Although the merits of the controversy are not directly involved in this appeal, the granting of a preliminary injunction requires a *prima facie* showing, and this Court may wish to be satisfied the District Court did not abuse its discretion. That it did not will be evident from the following review of the facts and the issues on the merits.

The United States acquired the subject lands pursuant to a preliminary contract of sale and purchase between the executors and trustees of the Estate of Joseph Leiter and the United States dated March 14, 1935 (Ex. U. S. 1, R. 62, 46). The mineral reservation on which Leiter relies was set forth in that agreement. Thomas Leiter inherited the property from Joseph Leiter, and on October 24, 1938, executed an instrument ratifying the prior agreement of sale of March 14, 1935, in all respects. (Ex. U. S. 4, R. 73, 47). Then, on December 21, 1938, Thomas Leiter made a formal deed to the United States of America, which deed was executed in pursuance of, and reiterated the identical mineral reservation set forth in, the earlier agreement of March 14, 1935. (Ex. U. S. 5, R. 75, 47). That mineral reservation reads as follows:

"The Vendor reserves from this sale the right to mine and remove, or to grant to others the right to mine and remove, all oil, gas and other valuable minerals which may be deposited in or under said lands, and to remove any oil, gas or other valuable minerals from the premises; the right to enter upon said lands at any time for the purpose of mining and removing said oil, gas and minerals, said right, subject to the conditions hereinafter set forth, to expire April 1, 1945, it being understood, however, that the vendors will pay to the United States of America, 5% of the gross proceeds received by them as royalties or otherwise from all oil or minerals so removed from in or under the aforescribed lands, until such time as the vendors shall have paid to the United States of America, the sum of \$25,000, being the purchase price paid by said United States of America for the aforescribed properties.

"Provided, that if at the termination of the ten (10) year period of reservation, it is found that such minerals, oil and gas are being operated and have been operated for an average of at least 50 days per year during the preceding three (3) year period to commercial advantage, then, and in that event, the said right to mine shall be extended for a further period of five (5) years, but that the right so extended shall be limited to an area of twenty-five acres of land around each well or mine producing, and each well or mine being drilled or developed at time of first extension, to-wit: April 1, 1945.

"Provided, that this said right to mine as previously stated shall be further extended from time to time for periods of five (5) years whenever operation during the preceding five (5) year period has been for an average of 50 days per year during this period, and

"Provided that at the termination of the ten (10) year period of reservation, if not extended, or at the termination of any extended period in case the operation has not been carried on for the number of days stated, the right to mine shall terminate, and complete fee in the land become vested in the United States.

"The reservation of the oil and mineral rights herein made for the original period of ten (10) years and for any extended period or periods in accordance with the above provisions shall not be affected by any subsequent conveyance of all or any of the aforementioned properties by the United States of America, but said mineral rights shall, subject to the conditions above set forth, remain vested in the vendors." (Emphasis added).

The original agreement of March 14, 1935 was executed just over ten years prior to April 1, 1945, which was the date the reserved mineral rights of Leiter were to terminate except as to any portions of such rights which might be extended if specific and stringent contractual conditions were fulfilled. Leiter's reserved mineral rights, both the contract of March 14, 1935 and the deed of December 21, 1938 said, would expire on April 1, 1945, unless:

(a) During the three year period immediately preceding the expiration date, mineral operations were conducted for an average of fifty days per year to commercial advantage;

(b) Even if that prerequisite were met, the mineral rights would be extended only as to individual 25-acre tracts around each producing or operating well at the expiration date;

(c) Any such extension of mineral rights on individual 25-acre tracts would be effective only for a five-year period; and

(d) If the mineral rights were so extended for a five-year period as to any 25-acre tracts around a producing or operating well, the extended mineral rights could be preserved for successive five-year periods on these twenty-five acre tracts only for so long a time as additional mineral operations were conducted in each five-year period for an average of fifty days per year.

The complaint of the United States herein sets forth that no drilling operations whatsoever were conducted by Thomas Leiter or by his transferee, Leiter Minerals, or by any other person in compliance with the foregoing requirements. Leiter makes no pretense of any attempt at compliance with those requirements. Instead, Leiter alleges in its State Court complaint that the mineral rights became vested in it forever, notwithstanding the contractual provisions of the reservation, by Louisiana Act 315 of 1940. But that statute, as will hereafter be shown, had no purpose to alter or strike down contractual provisions in United States acquisitions, nor would the Legisla-

ture of Louisiana have had the power to strike down such contractual elements had it chosen to make the attempt.

To demonstrate the purpose and effect of Louisiana Act 315 of 1940, it is necessary to review to some extent the law of Louisiana on mineral rights. Louisiana does not recognize ownership of minerals in place. Instead, the right to take the minerals is held to constitute a mere servitude or easement in respect to the land to which it applies. *Frost-Johnson Lumber Co. v. Salling's Heirs*, 150 La. 756, 863, 91 So. 207, 245; *Long-Bell Petroleum Co. v. Tritico*, 216 La. 426, 451, 43 So. (2d) 782, 791.

Articles 789 and 3546 of the Louisiana Civil Code have always provided a prescription, or statute of limitation, whereby servitudes lapse if a ten year period is permitted to expire without their having been exercised. Article 789 of the Louisiana Civil Code reads:

"A right to servitude is extinguished by the non-usage of the same during ten years."

And Article 3546 similarly provides:

"The rights of usufruct, use and habitation and servitudes are lost by nonuse for ten years".

For purposes of interruption of this prescription or limitation of ten years non-user, Louisiana law holds that the mineral servitude is exercised by the drilling of a well in an actual *bona fide* attempt at discovery of oil or gas, whether such well be productive of minerals or not. *Keebler v. Seubert*, 167 La. 901, 905, 120 So. 591, 592; *Frost Lumber Industries v. Republic Production Co.*, 112

F. (2d) 462 (C. C. A. 5), cert. den. 311 U. S. 676. The interruption by the drilling of a single dry well applies to the entire area of contiguous lands and starts a new period of ten years running as to all such area, no matter how large the area may be. *Lenard v. Shell Oil Co.*, 211 La. 265, 274, 29 So. (2d) 844, 847 (involving an 80,000 acre tract). Also, actual production from any part of a single contiguous area, no matter how large the area may be, keeps the legal prescription from running. *Patton v. Frost Lumber Industries*, 176 La. 916, 922, 147 So. 33, 35 (involving a 30,000 acre tract).

Such prescription of ten years non-user is a true prescription or statute of limitation that operates independently of any contractual provisions fixing the term for which mineral rights are sold or reserved. Thus, whether mineral rights are sold or reserved by contract for a period of fifteen years, twenty-five years, or in perpetuity, the legal prescription or limitation requires that the rights be exercised at least every ten years in order that they may continue to exist for their full contractual terms. This word "prescription" is civil law terminology for the ordinary common law statute of limitation. It is defined by Article 3457 of the Louisiana Civil Code as follows:

"Prescription is a manner of acquiring the ownership of property, or discharging debts, by the effect of time, and under the conditions regulated by law."

Thus, "prescription" is a limitation provided by law and Article 3470 of the Louisiana Civil Code makes it clear that "prescription" connotes nothing more:

"There are no other prescriptions than those established by this Code and the statutes of this State now in force."

Such legal prescription or limitation of ten years non-user is an entirely different concept from the contractual stipulations on term contained in Leiter's mineral reservation against the United States. Whereas Leiter would have it appear that its reservation and the Louisiana law on prescription are the same, the fact is that had Leiter's reservation done nothing more than express the existing law on prescription, the drilling of a single well on this single, contiguous tract of land of 8711 acres would have served to maintain the mineral servitude on the entire tract and not just as to 25 acres around each producing or operating well. Moreover, under the Louisiana rules on prescription, the drilling of just one well would have resulted in a continuation of the servitude for a ten year period instead of for a five year period as stipulated in Leiter's contract. Nor would it have made a bit of difference under the Louisiana rules on prescription how many days of mineral operations were conducted in what periods, as was specifically required in Leiter's contract.

Perhaps the most striking variation from the Louisiana law of prescription was, however, the requirement in Leiter's reservation that Leiter actually operate the minerals to commercial advantage during the initial ten year reservation period. As heretofore pointed out, Louisiana law would have recognized an interruption of the legal prescription by the drilling of a single dry hole; yet, Leiter had not only to find oil and gas but to produce it to "commercial advantage" in order to preserve his rights.

The plain truth is that Thomas Leiter made a deal with the United States under which all of his reserved mineral rights would expire at the end of a fixed term except to the extent such term might be extended as to all or a portion of the rights by Leiter's doing certain things. He did none of those things and consequently never extended the stated term with respect to any of his reserved rights. Thomas Leiter's reservation became dead by contract on April 1, 1945 and he had nothing left to convey to petitioner, Leiter Minerals.

Article 821 of the Louisiana Civil Code gives the parties the absolute right to contract in respect to the duration of a servitude:

"Servitudes are also extinguished when they have been established for a certain time only, or under a condition that in a certain event they shall cease, for when the time expires, or the event takes place, the servitude becomes extinguished of right."

Article 783 (6) of the Louisiana Civil Code is to the same effect:

"Servitudes are extinguished:

"6. By the expiration of the time for which the servitude was granted, or by the happening of the dissolving condition attached to the servitude."

In *Hodges v. Norton*, 200 La. 614, 8 So. (2d) 618, the Louisiana Supreme Court expressly recognized the right to limit the duration of a mineral servitude by contract, and it differentiated between a contractual termination clause and the completely separate prescription of ten years non-user:

"Thus, in the instant case, when A. J. Hodges released in favor of Selby the fifteen-year contractual limitation, his waiver, which inured to the benefit of Norton, had the effect of continuing the life of the servitude for an indefinite period—subject, however, to the prescription established by law." 200 La. at p. 628; 8 So. (2d) at p. 623.

Bodcaw Lumber Co. v. Magnolia Petroleum Co., 167 La. 847, 120 So. 389, also recognized the right to stipulate a contractual limitation of term:

"... The time limit of fifteen years, within which the Bodcaw Lumber Company, or its successors or assigns might have extracted and removed the oil and gas from the land, was inserted in the contract, not for the purpose of extending the time within which the right might be enjoyed, but for the purpose of limiting the time in which it might be enjoyed." 167 La. at p. 850; 120 So. at p. 390.

The Court of Appeals for the Fifth Circuit has recently, in a case coming up from Louisiana, rejected a contention similar to Leiter's. In *Texas Co. v. Crawford*, 212 F. (2d) 722, that Court had before it a mineral reservation which was stipulated to endure for a period of twenty-five years and as long thereafter as oil or gas might be produced. By two subsequent written acknowledgments, executed ten and twenty years later, the owners of the land had waived the Louisiana prescription of ten years non-user, and kept the mineral rights alive; but these acknowledgments and waivers stated that their effect was limited to the original twenty-five year term only. After

the twenty-five year term expired, the holder of the mineral rights contended that, because the legal prescription in Louisiana is ten years, the twenty-five year term was to be written out of the picture. But the Court, through Judge Hutcheson, rejected that contention, pointing out the great difference between contractual provisions limiting the duration of a mineral servitude, and the completely separate legal prescription of ten years non-user:

"We think this theory of defendants, which erroneously treats the acknowledgments of the interruption of the liberative prescription as operating to grant new servitudes inconsistent with the contractual limits of the original reservations, instead of, as they really do operating to free the contractually granted servitude from the prescription which would otherwise extinguish it, will not at all do. Resulting as it does from treating as a limitation upon the right of contracting as to servitudes the extinguishment of the servitude by the operation of the liberative prescription, it runs counter to the teachings of general jurisprudence with respect to the difference between the meaning and effect of a contract and the effect on contracts of statutes of prescription and limitation. It is in direct conflict with the law of Louisiana as it is stated in cases and text books." 212 F. (2d) at p. 725.

Thus, Leiter's reserved mineral rights expired under the provisions of the contract which he made and entered into with the United States. There is no question of applying any prescription or limitation established by Louisiana law. While Leiter Minerals alleges that Louisiana Act 315 of 1940 (now R. S. 9:5806) supports its cause

of action, all that statute did was to remove the legal limitation of ten years non-user against mineral reservations in sales to the United States. It simply declared such reservations to be "imprescriptible". (Appendix A, p. 53). But the elimination of the prescription of ten years non-user could not, and did not, alter or strike down contractual provisions in existing agreements whereby mineral servitudes had been established for limited periods of time only.

Moreover, Thomas Leiter knew and recognized that his reserved mineral rights would expire on April 1, 1945, because, on October 28, 1943, he assigned all of those rights to Humble Oil & Refining Company and entered into a separate agreement with Humble predicated upon April 1st, 1945 as the expiration date. (Ex. U. S. 16, R. 176, 57). Under the terms of such 1943 agreement, Humble was authorized to apply to the United States, before April 1st, 1945, for mineral leases on the lands Leiter had sold to the United States, and coincidentally therewith Humble was authorized to release to the United States Leiter's reserved mineral rights in advance of the April 1st, 1945 expiration date. In return, Leiter was to receive an overriding royalty on the United States mineral leases. Although Humble was in fact unable to get United States mineral leases, there was no conveyance from Humble back to Thomas Leiter until November 18th, 1952, long after The California Company had established production. (Ex. U. S. 15, R. 118, 50). The circumstance of the 1943 agreement and the long delay in effecting a reconveyance demonstrate Leiter's complete understanding and acceptance of April 1st, 1945 as the date upon which all his reserved mineral rights ran out.

From what has been said, it will be seen how incongruous is the attempt which Leiter has heretofore made to rely on *United States v. Nebo Oil Company*, 190 F. (2d) 1003 (C. A. 5). That case dealt with a perpetual mineral servitude which would have been good against the United States for all time to come, unless prescribed by the limitation of ten years non-user imposed by Louisiana law. Pursuant to the well-known rule that statutes of limitation are remedial and can be altered by the Legislature at will, the Court of Appeals held that Louisiana Act 315 of 1940 could, and did, validly remove such legal prescription, or limitation, of ten years non-user. By that holding, the Court gave effect to the mineral reservation in *Nebo* as it was written, and recognized the servitude as having perpetual duration. There were no contractual conditions on the exercise of the servitude maintained in the *Nebo* case, no contractual provisions for its extinction, no limitations to twenty-five acres around each producing well, no limitations to successive five-year periods, and no requirements of fifty days mineral operations, such as there are in Leiter's mineral reservation. The contract provisions of the servitude before the Court in *Nebo* are quoted herewith:

"... It is intended hereby to confer upon Vendee **absolutely and without limit for time of their enjoyment** any and every right, title and interest which this Vendor has to the oil, gas and sulphur within said lands, including the exclusive right to extract and produce same. And the rights herein conferred may be assigned, transferred or leased, in whole or in part, by Vendee or under its authority and shall inure to the benefit of Vendee, its suc-

cessors and assigns, and lessees hereunder, it being expressly stipulated that none of said rights in any of said lands shall be **prescribed** unless there shall elapse a full period of ten (10) years in which there shall be no exercise of any of the foregoing rights or user of any of the lands aforesaid under and by virtue hereof." 90 F. Supp. at p. 78. (Emphasis added).

So, then, the mineral rights there involved were stipulated to be enjoyed in perpetuity; and the tail-end provision expressly declared that the servitude was never to expire unless by operation of the prescription of ten years non-user under Louisiana law. When that legal limitation of ten years non-user was removed by Act 315 of 1940, the mineral rights could no longer become prescribed.

That is a wholly different situation from the reservation of Leiter in his sale to the United States. Leiter's mineral rights were to expire, by express stipulation in Leiter's contract of March 14, 1935 and its deed of December 21, 1938, on April 1, 1945 unless mineral operations were conducted to commercial advantage for an average of fifty separate days per year during the three year period immediately before April 1, 1945; and even if this prerequisite were met, his mineral rights could be extended **only** as to twenty-five acre blocks around each well or mine producing or drilling on the expiration date. The contract further said:

"Provided that at the termination of the ten (10) year period of reservation, if not extended, or at the termination of any extended period in case the op-

eration has not been carried on for the number of days stated, the right to mine shall terminate, and complete fee in the land become vested in the United States." (Ex. U. S. 1, R. 66, 46; Ex. U. S. 5, R. 82, 47).

This wording leaves no room for doubt. Leiter's reserved mineral rights expired pursuant to the plain terms of his contract with the United States.

The United States District Court for the Western District of Louisiana has upheld the rights of the United States under a similar reservation.

In *Hickman v. United States*, 135 F. Supp. 919 (W. D. La.), the United States was sued by adverse claimants to mineral rights in lands other than Leiter's but subject to a mineral reservation substantially similar to Leiter's. This Hickman reservation occurred in a deed to the United States on November 13, 1930, and, just as in Leiter's case, the mineral rights were reserved for a ten year period subject to a limited right of extension only if specific and stringent operational requirements were met. These requirements were: (a) the reserved mineral rights had to have been operated to commercial advantage within the last five years of the ten year reservation; (b) if that prerequisite were met, the right to mine might be extended for successive periods of five years each but only so long as operations during the last preceding five year period had been conducted for an average of 120 days; and (c) any and all extensions would be limited to the land section or sections in which the operations had been actually carried on during the last five years. All of these

limitations were, of course, comparable to Leiter's. At the end of the Hickman reservation it was also stated, just as in Leiter's, that if the requisite operations were not carried on, complete fee in the land would become vested in the United States at the end of the ten year reservation.

The adverse claimants in *Hickman* sued the United States under the Tucker Act, seeking to recover money judgment for rentals received by the United States under a certain mineral lease which it had executed. The first opinion of the United States District Court, reported at 135 F. Supp. 919, held there was no jurisdiction of such suit against the United States:

"It is obvious that plaintiffs here seek to recover on the basis of contracts 'implied in law'. Were it not for the Louisiana Legislature having adopted Act 315 of 1940, the mineral reservation made by plaintiffs' ancestors would have expired by its own terms on November 13, 1940. . . ." 135 F. Supp. at p. 924.

Subsequently, the plaintiffs in *Hickman* moved to re-argue and re-submit, and the District Court rendered a further opinion in which Judge Dawkins, Jr., stated:

"Contrary to the allegations of their complaint, and the argument advanced in their original brief, plaintiffs now say they stand, not on Act 315 of 1940, but upon the original contract, the deed to the Government in which the minerals were reserved. If this is so—if they actually have abandoned their reliance upon the Legislature's having extended vicariously the life of the servitude—they fail to state a claim upon which relief can be granted, because

the reserved mineral interest expired, was extinguished by its own terms, on November 13th, 1940, ten years from its original date.

"If they rely upon the contract and the Statute, which they actually are doing, this Court has no jurisdiction because the express terms of the contract, limiting the life of the servitude to ten years in the absence of development, would be rendered nugatory by the Act of 1940, without the Government's consent: a quasi-contract." 140 F. Supp. at p. 760.

This decision fully sustains the position of the United States and its mineral lessees with regard to the termination of the Leiter reservation.

The Plaquemines Parish Court patently erred in ruling that only Leiter's right to enter expired on April 1, 1945:

(1) The reservation expressly stated that "complete fee in the land" would become vested in the United States at April 1, 1945, thereby leaving no room for any outstanding rights in Leiter.

(2) If one cannot enter, one cannot mine and remove.

In Plaquemines Parish, the State Court has rendered an opinion overruling the exceptions filed by the United States' mineral lessees. (Ex. U. S. 15, R. 145, 50). Such exceptions in Louisiana procedure are comparable to, and serve the same purpose as, a preliminary motion to dismiss under Federal practice. Thus, the State Court's ruling was interlocutory and was based solely on the allegations of Leiter's complaint. Contrary to the authorities set

forth in this brief, the Plaquemines Parish Court held that the suit before it was not against the United States; that the United States was not an indispensable party; and that Leiter's complaint stated a good cause of action.

A decision by a state court of this character is not binding in the Federal Courts, *King v. United Commercial Travelers*, 333 U. S. 153, nor could this particular ruling even be of persuasive value since plainly contrary to Louisiana appellate decisions and well settled principles of Louisiana law. (Pages 11-34, above). In part, the State Court's conclusions were founded on the false factual premise that the provisions of the deed to the United States of December 21, 1938, when referring to "the ten year period of reservation", were inconsistent with the stipulated expiration date of April 1, 1945. As reviewed earlier in this brief, the December 21st, 1938 deed was executed by Thomas Leiter in compliance with a prior agreement of sale entered into with the United States on **March 14th, 1935**, from which earlier date the ten year contractual period was thoroughly consistent with the expiration date of April 1, 1945. (Ex. U. S. 1, R. 62, 46). Leiter's State Court complaint wholly failed to mention this March 14th, 1935 agreement, and the State Court was unaware of it. (Ex. U. S. 15, R. 101, 50). In petitioner's brief in this Court the same erroneous argument is continued, without mention of the contract of March 14th, 1935. (Brief, p. 39. fn. 39).

And whereas the State Court held that Leiter's right to enter for the purpose of mining and removing expired April 1st, 1945, nevertheless leaving Leiter's right to mine and remove untouched, this distinction is insupportable. (Ex. U. S. 15, R. 148, 50). How one could mine

and remove without entering for the purpose of mining and removing is not suggested in the opinion of the Plaquemines Parish Court. Impossible upon its face, the distinction could never be reconciled with the clause of the mineral reservation which says:

"Provided, that at the termination of the ten (10) year period of reservation, if not extended, or at the termination of any extended period in case the operation has not been carried on for the number of days stated, the right to mine shall terminate, and complete fee in the land become vested in the United States." (Ex. U. S. 1, R. 66, 46; Ex. U. S. 5, R. 82, 47). (Emphasis added).

So there is no such distinction as found by the Plaquemines Parish Court. The words "complete fee" admit of no other conclusion than that Leiter had nothing left.

IV.

THE INJUNCTION BELOW WAS A PROPER REMEDY:

The prohibition of Section 2283 of the Judicial Code does not apply to the United States. The injunction below is supported by *United States v. Lee*, *Land v. Dollar*, and numerous precedents in the lower Federal Courts. No rule of comity requires denial of Federal jurisdiction in favor of the State Court so that it can proceed against property of the United States. Nor has the State Court ever taken this property into its possession or custody.

In *United States v. United Mine Workers*, 330 U. S. 258, this Court held that the Norris-LaGuardia Act, prohibiting Federal Courts from issuing injunctions in

labor disputes, was not applicable to the United States. The reasoning was that the statutory prohibition could not be held to apply to the sovereign without express indication that the sovereign was included. The Norris-LaGuardia Act said:

"No court of the United States . . . shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute . . ." 47 Stat. 70; 29 U. S. C. § 101.

The principle of the *United Mine Workers* case is equally applicable to the prohibition under Section 2283 of Title 28 of the U. S. Code, which provides:

"A court of the United States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 62 Stat. 968.

Injunctions restraining similar actions in state courts have been approved in the following cases: *Brown v. Wright*, 137 F. (2d) 484 (C. C. A. 4); *United States v. Inaba*, 291 Fed. 416 (E. D. Wash.); *United States v. McIntosh*, 57 F. (2d) 573 (E. D. Va.), appeal dismissed, 70 F. (2d) 507 (C. C. A. 4); *United States v. Babcock*, 6 F. (2d) 160 (D. C. Ind.) modified 9 F. (2d) 905 (C. C. A. 7); *United States v. Cain*, 72 F. Supp. 897 (W. D. Mich.); *United States v. Phillips*, 33 F. Supp. 261 (N. D. Okla.), vacated on other grounds, 312 U. S. 246; *United States v. Taylor's Oak Ridge Corporation*, 89 F. Supp. 28 (E. D. Tenn.)

All these lower Federal decisions were rendered at a time when Section 2283 or its predecessor was in effect. No case denies to the United States Courts the right to issue such an injunction at the behest of the United States. While petitioner now contends that Section 2283 prohibited the injunction below, its petition for certiorari stated that this statute was "not squarely involved" and was only "incidentally involved" because of the principle on which it was based. Whether petitioner saved the point or not, its present argument is based solely upon the decision of this Court in *Amalgamated C. W. of America v. Richman Bros.*, 348 U. S. 511, which case is clearly inapplicable because the United States was not a plaintiff nor was it even a party thereto. Nothing contained in the *Richman* decision indicates that, in this Court's views, Section 2283 operates against the United States. The reenactment of the Statute, after all the above cited lower Federal decisions, into the Judicial Code of 1948, could only constitute an acceptance of their interpretation.

Whereas petitioner maintains that the underlying policy of Section 2283 should apply with greater force against the United States, the opposite is true. Petitioner concedes, as it must, that no decree in Plaquemines Parish could be *res judicata* against the United States. (Brief, p. 30). Ultimately, then, petitioner would allow the United States its day in court. It would be far more distasteful then to have to enjoin and undo a state court judgment than it would be now to prevent the abortive state court judgment from ever happening in the first place. Thus, the injunction below actually serves the policy of Section 2283 by minimizing the conflict between the two Courts.

The Plaquemines Parish action is a suit against the United States. (Pages 8-15, above). No court, state or Federal, has jurisdiction to render judgment against the United States in such a suit without the consent of Congress, not even by way of counterclaim. *State of Minnesota v. United States*, 305 U. S. 382; *United States v. N. Y. Rayon Importing Co.*, 329 U. S. 654; *United States v. Shaw*, 309 U. S. 495. Congress has never authorized such an action against the United States, either in the state or Federal Courts. Therefore, the State Court had no proper jurisdiction, and since the United States District Court was exclusively vested with the right to make a final and binding determination on the United States' title, the injunction below was proper and necessary.

While Leiter relies on *United States v. Lee*, 106 U. S. 196, and *Land v. Dollar*, 330 U. S. 731, both those litigations are good authority for the issuance of the injunction below. In *Lee* and *Dollar* this Court held that actions, because restricted to possessory rights and not necessitating adjudications on title, were permissible against persons holding custody of property for the United States. As heretofore shown, Leiter's State Court action is not limited to possession, and must decide upon title. (Pages 8-10, above). But even if, contrary to Louisiana law, Leiter's State Court suit could be so limited, both *Lee* and *Dollar* are precedents for the subsequent filing by the United States of its bill to quiet title and for the issuance of the injunction below to preserve the *status quo*. In *United States v. Lee*, this Court said:

"The United States may proceed by a bill in chancery, to quiet its title, in aid of which, if a proper case is made, a writ of injunction may be obtained." 106 U. S. at p. 222.

In the *Dollar* litigation, possession of the shares of stock there in dispute was awarded the Dollars by the District of Columbia Courts. 184 F. (2d) 245; 188 F. (2d) 629. This occurred subsequently to the original decision by this Court in *Land v. Dollar*, 330 U. S. 731, permitting a possession suit, but not a title suit, to be maintained by the Dollars. The United States then instituted a bill to quiet title in the Northern District of California and that Court issued a temporary injunction restraining the Dollars, until the title suit could be determined, from exercising the possession previously awarded them in the District of Columbia. 97 F. Supp. 50. The Court of Appeals for the District of Columbia thereupon issued an injunction against the United States officials, restraining them from availing themselves of the California injunction, and found them in civil contempt for bringing the California litigation. 190 F. (2d) 623. This Court, in a *per curiam*, stayed the decree of the Court of Appeals for the District of Columbia and granted certiorari, pointing out that the judgment in the District of Columbia possession litigation was not *res judicata* against the United States on the question of title. 341 U. S. 737. Thus, this Court appears to have given express approval to the California injunction. (No further decision was rendered afterward in *Dollar* since the writ of certiorari was dismissed as moot. 344 U. S. 806).

The *Lee* and *Dollar* cases therefore support the issuance of the District Court's injunction. While Leiter invokes here a rule of comity, claiming that the Federal jurisdiction should yield to the State Court on the ground that the State action was prior in time and was either *in rem* or *quasi in rem*, such rule of comity has no application except where the choice of jurisdiction between state and Federal courts is otherwise equal. Here that is not true. Moreover, Leiter's State Court complaint is not, under the decisions of this Court, *in rem* or *quasi in rem* as contended by Leiter. The State Court has never undertaken to acquire possession of the property, nor is it required by law, or even asked, to do so. In *Mandeville v. Canterbury*, 318 U. S. 47, it was held that suits between private parties to declare or determine title to real property, whether in the state or Federal courts, do not give the first court such jurisdictional control over the property as to preclude other litigation:

"... Maintenance of the suit in the district court does not require possession of the property by that court or require it to assume supervisory or administrative control of it even through exercise of its control over the trustees, at least until it has determined that respondent had some interest in the property, nor has the court undertaken to exercise such control. . . . So far as the suits in either the federal or the state courts seek an adjudication of the interests of the parties in the land, it cannot be said that the federal court has exclusive jurisdiction." 318 U. S. at pp. 49, 50.

And even if the State Court action were *in rem*, this could not prevent the United States Courts from exercising

jurisdiction to protect the interests of the United States. If, in a state court action, a Federal post office building, a custom house, or an important defense facility were seized and taken into custody, the United States Courts could not, by such device, be prevented from exercising the necessary authority to protect the rights and property of the United States Government.

No purpose would be served by petitioner's proposed abandonment of jurisdiction to the State Court. Louisiana Act 315 of 1940 clearly does not apply and the impossible interpretation which Leiter advocates would be unconstitutional against the United States. This case presents the reverse of the "doctrine of abstention" cases relied on by petitioner.

This brief has shown that Leiter's mineral reservation expired on April 1, 1945 in accordance with its own terms, and that Louisiana Act 315 of 1940 has no bearing. (Pages 19-32, above). Such statute did not purport to strike down and annul the provisions of the United States' contract, and any suggestion to the contrary is entirely wanting in substance. Petitioner's brief nevertheless argues that the State Courts should be given the chance to interpret the Statute so as to see if they could hold it did attempt to alter and strike down the contractual provisions of the United States' purchase agreement; and petitioner concedes that this interpretation, if it were made, would raise serious constitutional questions. (Brief, p. 40).

Such contention by Leiter is anomalous. If the State Courts agreed with the position of the United States and its mineral lessees that the State statute has no application, Leiter's claims are without merit. If, on the other

hand, the State Courts were to hold, as Leiter suggests they be given the opportunity, that Act 315 of 1940 did attempt to alter and strike down the provisions of the United States' contract, such interpretation would impair the obligation of the contract and divest the vested rights of the United States. In either event, petitioner could not succeed. No purpose would be served by sending this case to the State Courts solely to give those courts the opportunity to render an unconstitutional interpretation of Louisiana Act 315 of 1940.

This case is the exact reverse of the "doctrine of abstention" cases relied on by petitioner. In those cases this Court gave to state courts first opportunity to interpret their statutes in the hope Federal Constitutional questions would thereby be eliminated. Here, however, petitioner asks that the State Courts be given such first opportunity for the sole and only purpose of creating serious Federal Constitutional questions. (Petitioner's Brief, pp. 39, 40). For, the only possible State interpretation of Act 315 of 1940 which Leiter can propose to aid itself would be clearly unconstitutional against the United States.

Leiter's position is even more of a paradox in the light of *Whitney National Bank of New Orleans v. Little Creek Oil Co.*, 212 La. 949, 33 So. (2d) 693. There, the highest court of Louisiana dismissed an interpleader suit and refused to consider the constitutionality of this same statute, Act 315 of 1940, because the United States was not a party and could not be made one. The constitutional questions raised in that case were different from the ones presently engendered by Leiter, because the mineral servitude of Nebo Oil Company, there before the Court, was

perpetual. (See discussion of *United States v. Nebo Oil Co.*, 190 F. (2d) 1003 (C. C. A. 5), p. 30, above). Nevertheless, the principle is the same and in the *Little Creek* case the Louisiana Supreme Court said:

"... the United States is the only party which has an interest in urging the unconstitutionality of the statute, and the judgment wherein the lower court found the statute to be applicable and constitutional and provided that nothing therein was to be construed as res judicata as against the United States, was improper without the government being a party hereto." 212 La. at pp. 963, 964; 33 So. (2d) at p. 698.

That decision puts petitioner in the impossible position of asking this Court to remit to the Louisiana courts a case over which those courts have held they cannot take jurisdiction.

United States v. Bank of New York & Trust Co. did not involve a suit against the United States and cannot be made the basis for compelling the United States to litigate the title to any of its properties in any state court selected by an adverse claimant.

Leiter Minerals relies upon *United States v. Bank of New York & Trust Company*, 296 U. S. 463, but the reference does not withstand analysis. In *Bank of New York & Trust Company*, the Superintendent of Insurance for the State of New York was attempting to liquidate security deposits made by Russian insurance companies many years before any claim of the United States to the funds arose. Indeed, these deposits were made prior to

1918, whereas the claimed assignment of funds to the United States by the Russian Government did not occur until 1933. Thus, the Superintendent of Insurance for the State of New York did not come into possession of the funds adversely to the United States. This Court expressly decided that the liquidation proceedings in the State Court were not a suit against the United States and that the United States, in asserting its claim to funds which were already in custody of the Superintendent, would not be going into the State Court as a defendant.

In the case at bar, however, there can be no question that the suit in Plaquemines Parish is already against the United States. (Pages 8-15, above). Whereas the Superintendent of Insurance in *Bank of New York & Trust Company* did not come into possession of his funds adversely to the United States; the plaintiff in the Plaquemines Parish suit can only establish its claimed rights adversely to the United States. It is the United States which now has, and for many years has had, possession of these mineral rights.

In the *Bank of New York & Trust Company* case, the Superintendent of Insurance was not trying to take the funds away from anyone; he wanted to distribute them to their rightful owner. But in the Plaquemines Parish case, the very object of the litigation is to take the mineral rights away from one specific party, the United States, and invest them in another.

Using the *Bank of New York* case as a basis, petitioner argues that the United States must go into Plaquemines Parish to defend its interests and urges that, having

got there, the United States would not be a defendant after all. It proposes that the United States then be labelled an intervenor in order to maintain the State Court's jurisdiction. But a mere change in nomenclature could not help, as the United States would still be the real defendant in the State Court litigation, the announced purpose of which is to adjudicate title adversely to, and take possession away from, the United States. (Pages 8-11, above). If the United States were forced to go into such litigation, it could not be appearing in any capacity other than as a defendant.

Leiter's argument here is inconsistent within itself. The predicate of Leiter's motion to stay the United States' suit in the Federal Court has to be that the United States is, for practical purposes, already a defendant in the State Court action, yet Leiter inconsistently argues in brief that should the United States be required to intervene in that case, it would not be a defendant. This unrealistic and contradictory position is assumed in a hopeless attempt to avoid the line of authority now reviewed.

This Court has repeatedly decided that officials of the United States have no power to appear in and defend a suit against the United States, brought without the consent of Congress; and where United States officials have in fact appeared in, and defended, such actions, the judgments have been held void. In *Carr v. United States*, 98 U. S. 433, the United States filed a bill to quiet title to certain property which had been the subject of eviction proceedings in a state court against employees of the United States. It was held that the state eviction judgments were no estoppel against the United States, even though United

States officials had appeared in and defended the state court litigations. And this Court maintained the title of the United States notwithstanding the decrees in the state court.

Stanley v. Schwalby, 162 U. S. 255, is another instance where United States officials were held powerless to bind the United States through their participation in state court litigation. These two cases, *Carr and Schwalby*, are the foundation of a series of later decisions of similar purport. In *United States v. N. Y. Rayon Importing Co.*, 329 U. S. 654, this Court said:

"... It has long been settled that officers of the United States possess no power through their actions to waive an immunity of the United States or to confer jurisdiction on a court in the absence of some express provision by Congress." 329 U. S. at p. 660.

In *United States v. Shaw*, 309 U. S. 495, the United States filed claim in a state court probate proceeding. Counter claim was made and judgment rendered thereon. This Court held that the judgment on the counter claim was wholly invalid since it was a suit against the United States, for which no consent had been given. *United States v. U. S. F. & G. Co.*, 309 U. S. 506, held that judgment entered against the United States on a cross claim was void. And *Minnesota v. United States*, 305 U. S. 382, held there was no jurisdiction over an expropriation suit against the United States even after the United States officials had appeared in the action and removed it to the Federal Courts.

These authorities establish that any judgment the Plaquemines Parish Court might render would ultimately have to be held void as against the United States, whether representatives of the United States appeared in such suit or not.

The sovereignty of the United States under our Federal system of government requires that title to the national properties be litigated in, and, where necessary, protected by, the United States Courts.

Petitioner proposes a method whereby the United States could be required against its will to submit any of its properties to suit in the state courts. Even if all the precedents reviewed in this brief did not exist, Leiter's proposed surrender of sovereignty by the United States to the Plaquemines Parish Court would be, as an initial proposition, incompatible with our Federal system of government.

The answers to the following would weigh most heavily against submission of the Federal Government's property to decision in the state courts: Would there be a standard form of procedure in the state courts or would there be forty-eight different sets of laws, procedures and remedies? Would the United States have to post bond in order to have its supersedeas in the state courts? Would the United States be hampered in the performance of its functions, and subjected to possible burdensome and harassing litigation in the state courts? By what means are the state judges selected and what assurance would there be of complete independence of action? Would the state courts be, at times, possibly subject to local influence not always consistent with the national interest?

The Constitution recognized the effect of local influence by extending the judicial power of the United States to diversity cases. In *Martin v. Hunter's Lessee*, 1 Wheat. 303, this Court observed:

"The constitution has presumed (whether rightly or wrongly we do not inquire) that state attachments, state prejudices, state jealousies, and state interests, might sometimes obstruct, or control, the regular administration of justice." 1 Wheat. at p. 347.

Since the interests of a single citizen of another state were accorded protection in the Federal courts, the authors of the Constitution must necessarily have assumed that the much greater interests of all the citizens of all the states would be secure against local influence. They must also have known that segments of the country would be, as they sometimes have been, out of sympathy with the policies and position of the national government. In *Tennessee v. Davis*, 100 U. S. 257, this Court said:

"... The legislation of a State may be unfriendly. It may affix penalties to acts done under the immediate direction of the National Government, and in obedience to its laws. It may deny the authority conferred by those laws. The State Court may administer not only the laws of the State, but equally federal law, in such a manner as to paralyze the operations of the government. And even if, after trial and final judgment in the state court, the case can be brought into the United States Court for review, the officer is withdrawn from the

discharge of his duty during the pendency of the prosecution, and the exercise of acknowledged federal power arrested.

"We do not think such an element of weakness is to be found in the Constitution. The United States is a government with authority extending over the whole territory of the Union, acting upon the States and upon the People of the States. While it is limited in the number of its powers, so far as its sovereignty extends it is supreme. No State Government can exclude it from the exercise of any authority conferred upon it by the Constitution, obstruct its authorized officers against its will, or withhold from it, for a moment, the cognizance of any subject which that instrument has committed to it." 100 U. S. at p. 263.

In *Martin v. Hunter's Lessee*, above, it was held that, by necessary implication under the Constitution, the appellate powers of this Court extended to cases in the state courts. And in *Tennessee v. Davis*, above, this Court further held that the right to remove cases from state courts to Federal courts likewise existed by necessary implication under the Constitution. These decisions were founded upon the supremacy clause of the Constitution, and were reached over objection that they violated principles of comity between state and Federal courts.

The case at bar involves an attack in a State Court against property which the United States acquired pursuant to an Act of Congress. (The Migratory Bird Conservation Act, 45 Stat. 1222). This statute could not be the supreme law of the land unless there were an effective

means of protecting the property which the United States acquired under it. The injunction below was necessary for that purpose.

It is no answer to suggest that the ultimate remedy of certiorari lies from the state courts to this Court. Were those holding possession of Government property to be wrongfully evicted in a state court, grave injury might be done at once, as indeed it would in the case at bar. Nor is the remedy of certiorari to a state court equivalent to trial in the Federal Courts from the outset in accordance with standard Federal procedures.

VI.

CONCLUSION.

Petitioner has been out of possession for many years while this property was being developed by the United States' mineral lessees. Petitioner has no investment at stake. If the United States succeeds in establishing its title, but in the meantime Leiter Minerals should secure the eviction of the mineral lessees of the United States in Plaquemines Parish, serious and permanent damage would be done to the United States as owner and to its mineral lessees as operators of the property. The jurisdiction of the United States Courts to determine the title of the United States would not be an effective jurisdiction if, pending their decision, the Plaquemines Parish case were permitted to proceed and wreak havoc to the property. No final and binding decision on the title of the United States can be made by the State Court, where the United States is not present and cannot be made a party. Petitioner acknowledges that a State Court de-

cree in Plaquemines Parish "would not have the effect of *res judicata* against the Government". (Petitioner's brief, p. 30). Continuation of the State Court case could therefore accomplish nothing and the injunction below should be affirmed in order to preserve the *status quo* until the controversy can be decided in the United States Courts, which alone have the power to make a determination which will be final and binding upon all interested parties.

Respectfully submitted,

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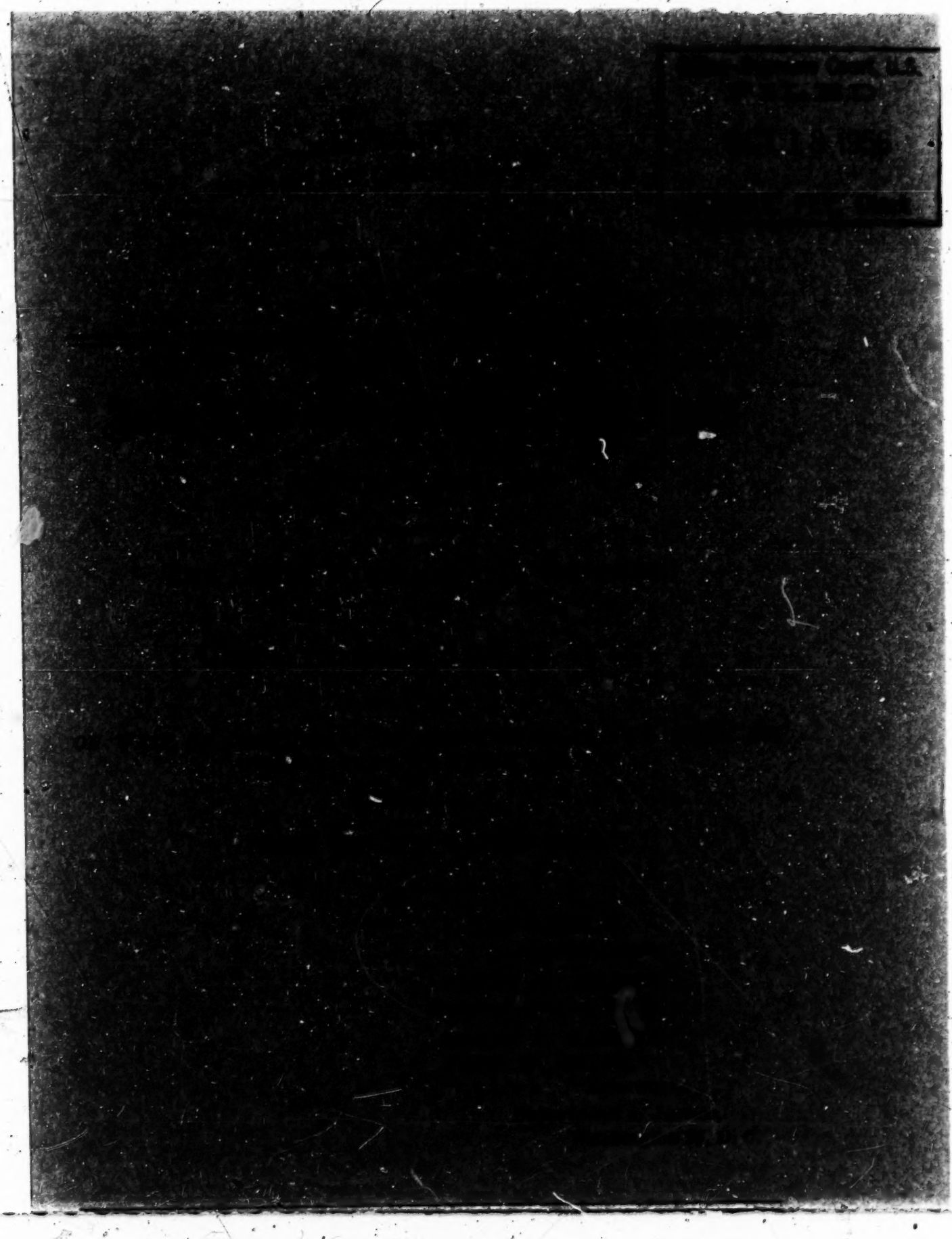
APPENDIX "A"**Louisiana Act 315 of 1940**

"Section 1. Be it enacted by the Legislature of Louisiana, That when land is acquired by conventional deed or contract, condemnation or expropriation proceedings by the United States of America, or any of its subdivisions or agencies, from any person, firm or corporation, and by the act of acquisition, verdict or judgment, oil, gas, and/or other minerals or royalties are reserved, or the land so acquired is by the act of acquisition conveyed subject to a prior sale or reservation of oil, gas and/or other minerals or royalties, still in force and effect, said rights so reserved or previously sold shall be imprescriptible.

"Section 2. That Act 68 and Act 151 of 1938 and all other laws or parts of laws, general or special, in conflict herewith are hereby repealed."

The above Act was carried into the Louisiana Revised Statutes of 1950, R. S. 9:5806, as follows:

"When land is acquired by conventional deed or contract, condemnation or expropriation proceedings by the United States of America, or any of its subdivisions or agencies, from any person, firm, or corporation, and by the act of acquisition, verdict, or judgment, oil, gas, or other minerals or royalties are reserved, or the land so acquired is by the act of acquisition conveyed subject to a prior sale or reservation of oil, gas, or other minerals or royalties, still in force and effect the rights so reserved or previously sold shall be imprescribable."



INDEX

	Page
Opinions below	1
Jurisdiction	1
Statutes and constitutional provisions involved	2
Question presented	3
Statement	3
Summary of argument	8
Argument:	
I. The Federal district court has exclusive jurisdiction to determine the title of the United States to the mineral rights claimed by petitioner.....	13
II. The Louisiana state court lacks jurisdiction to determine the title of the United States.....	22
A. The suit filed by petitioner in the Louisiana court is in fact a suit against the United States, to which the United States is not a party and, absent Congressional consent, cannot be made a party, and the state court is therefore without jurisdiction.....	22
B. Treating the case as one in which the merits may be looked to in determining jurisdiction, the conclusion that the state court action is in reality a suit against the United States is confirmed.....	25
C. Petitioner's contention for jurisdiction in the state court is untenable.....	30
III. Issuance of the injunction was an appropriate exercise of judicial power under the circumstances of this case.....	35
Conclusion.....	45
Appendix.....	46-47

CITATIONS

Cases:

<i>Amalgamated Clothing Workers v. Richman Brothers Co.</i> , 348 U. S. 511	12, 39
<i>Appalachian Electric Power Co. v. Smith</i> , 67 F. 2d 451	41
<i>Belknap v. Schild</i> , 161 U. S. 10	23

Cases—Continued

	Page
<i>Blondet v. Hadley</i> , 144 F. 2d 370	41
<i>Brown v. Wright</i> , 137 F. 2d 484	37, 38
<i>Carr v. Unitea States</i> , 98 U. S. 433	10, 21, 23, 40
<i>Christian v. Atlantic & N. C. R. R. Co.</i> , 133 U. S. 233	23
<i>Clearfield Trust Co. v. United States</i> , 318 U. S. 363	43
<i>Cohens v. Virginia</i> , 6 Wheat. 264	15
<i>Correa v. Barbour</i> , 71 F. 2d 9	41
<i>Crane v. United States</i> , 44 C. Cls. 324, affirmed sub. nom. <i>Hussey v. United States</i> , 222 U. S. 88	41
<i>Cummings v. Deutsche Bank</i> , 300 U. S. 115	23
<i>Cunningham v. Macon & Brunswick R. R. Co.</i> , 109 U. S. 446	23, 40
<i>Dreux v. Kennedy</i> , 12 Robinson (La. Reps.) 489	34, 35
<i>Girard Trust Co. v. United States</i> , 149 F. 2d 872	43
<i>Goldberg v. Daniels</i> , 231 U. S. 218	23
<i>Gulf Refining Co. v. Isaac R. Price, et al</i>	35
<i>Hickman v. United States</i> , 135 F. Supp. 919, rehearing denied, 140 F. Supp. 759	29
<i>Hopkins v. Clemson College</i> , 221 U. S. 636	23
<i>Hussey v. United States</i> , 222 U. S. 88	40, 41
<i>Iron Cliffs Co. v. Negaunee Iron Co.</i> , 197 U. S. 463	40
<i>Kline v. Burke Construction Co.</i> , 260 U. S. 226	39
<i>Land v. Dollar</i> , 190 F. 2d 366, certiorari granted, 341 U. S. 737, writ dismissed, 344 U. S. 806	41
<i>Land v. Dollar</i> , 330 U. S. 731	9, 25, 41
<i>Lankford v. Platte Iron Works</i> , 235 U. S. 461	23
<i>Larson v. Domestic & Foreign Commerce Corp.</i> , 337 U. S. 682	9, 18, 23, 25
<i>Louisiana v. Garfield</i> , 211 U. S. 70	23
<i>McClellan v. Carlan</i> , 217 U. S. 268	40
<i>Mine Safety Appliance Co. v. Forrestal</i> , 326 U. S. 37	23
<i>Minnesota v. Hitchcock</i> , 185 U. S. 373	23
<i>Minnesota v. United States</i> , 305 U. S. 382	10, 15, 20, 23, 31, 32
<i>Missouri v. Fiske</i> , 290 U. S. 18	40
<i>Morrison v. Work</i> , 266 U. S. 481	23
<i>Naganab v. Hitchcock</i> , 202 U. S. 473	23
<i>New Mexico v. Lane</i> , 243 U. S. 52	23
<i>Oregon v. Hitchcock</i> , 202 U. S. 60	23
<i>Sawyer v. Dollar</i> , 190 F. 2d 623, certiorari granted, 342 U. S. 875, judgment vacated as moot, 344 U. S. 806	41

Cases—Continued

Page

<i>Scranton v. Wheeler</i> , 57 Fed. 803, reversed on another ground, 163 U. S. 703	41
<i>Scranton v. Wheeler</i> , 179 U. S. 141	40
<i>Stanley v. Schwalby</i> , 162 U. S. 255	9,
10, 11, 17, 18, 19, 23, 31, 40	40
<i>Stone v. Interstate Natural Gas Co.</i> , 103 F. 2d 544, affirmed <i>per curiam</i> , 308 U. S. 522	41
<i>Sunderland v. United States</i> , 266 U. S. 226	44
<i>Tindal v. Wesley</i> , 167 U. S. 204	40
<i>United States v. Alleghany County</i> , 322 U. S. 174	43
<i>United States v. Cain</i> , 72 F. Supp. 897	37
<i>United States v. Babcock</i> , 6 F. 2d 160	37
<i>United States v. Bank of New York & Trust Co.</i> , 296 U. S. 463	11, 32, 40
<i>United States v. For</i> , 94 U. S. 315	44
<i>United States v. Herron</i> , 20 Wall. 251	38
<i>United States v. Inaba</i> , 291 Fed. 416	37
<i>United States v. Jones</i> , 176 F. 2d 278	43
<i>United States v. Lee</i> , 106 U. S. 196	9, 19, 20, 25, 40
<i>United States v. Louisiana</i> , No. 15 Orig	36
<i>United States v. McIntosh</i> , 57 F. 2d 573	37, 40
<i>United States v. Nebo Oil Co.</i> , 190 F. 2d 1003	27, 28, 29
<i>United States v. Phillips</i> , 33 F. Supp. 261	37
<i>United States v. Prince William County</i> , 9 F. Supp. 219, affirmed, 79 F. 2d 1007, certiorari denied, 297 U. S. 714	37
<i>United States v. Shaw</i> , 309 U. S. 495	10, 21, 23
<i>United States v. Standard Oil Co.</i> , 332 U. S. 301	43
<i>United States v. Stevenson</i> , 215 U. S. 190	38
<i>United States v. Taylor's Oak Ridge Corp.</i> , 89 F. Supp. 28	37, 38
<i>United States v. United Mine Workers</i> , 330 U. S. 258	11, 38
<i>United States v. U. S. Fidelity & Guaranty Co.</i> , 309 U. S. 506	10, 21, 23
<i>United States v. Van Horn</i> , 197 Feb. 611	41
<i>United States v. Wyoming</i> , 331 U. S. 440	38
<i>United States v. Wittek</i> , 337 U. S. 346	11, 38
<i>United States Department of Agriculture v. Hunter</i> , 171 F. 2d 793	16
<i>Whitehead v. Cheres</i> , 67 F. 2d 317	41
<i>Whittin Machine Works v. United States</i> , 175 F. 2d 504	43
<i>Wood v. Phillips</i> , 50 F. 2d 714	40

Constitution and statutes:

Constitution of the United States:

Art. 1, § 10, cl. 1	2
5 U. S. C. 316	34
28 U. S. C. 1345	2, 9, 14
28 U. S. C. 2283	2, 11, 38, 39
Act No. 315 of Louisiana, 1940	2, 27
Louisiana Code of Practice:	
Sec. 389	33
Arts. 43, 44	22
Art. 392	33

Miscellaneous:

Reviser's Notes, H. Rept. 308, 80th Cong., 1st sess., A-182	39
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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 26

THE LEITER MINERALS, INC., PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the district court (R. 152-163) is reported at 127 F. Supp. 439. The opinion of the court of appeals (R. 176-180) is reported at 224 F. 2d 381.

JURISDICTION

The judgment of the court of appeals was entered June 30, 1955 (R. 181). A timely petition for rehearing was denied October 14, 1955 (R. 181). The petition for a writ of certiorari was filed January 9, 1956, and granted February 27, 1956 (R. 182). The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

28 U. S. C. 1345 reads as follows:

Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress.

28 U. S. C. 2283 reads as follows:

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress; or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

Art. 1, § 10, cl. 1 of the United States Constitution provides as follows:

No State shall * * * pass * * * any law impairing the Obligation of Contracts * * *.

Section 1 of Act No. 315 of Louisiana, 1940, reads as follows:

Section 1. Be it enacted by the Legislature of Louisiana, That when land is acquired by conventional deed or contract, condemnation or expropriation proceedings by the United States of America, or any of its subdivisions or agencies, from any person, firm or corporation, and by the act of acquisition, verdict or judgment, oil, gas, and/or other minerals or royalties are reserved, or the land so acquired is by the act of acquisition conveyed subject to a prior sale or reservation of oil, gas and/or other minerals or royalties, still in force and effect, said rights so reserved or previously sold shall be imprescriptible.

QUESTION PRESENTED

Whether a United States district court, in which a suit by the United States to quiet title to mineral rights is pending, may enjoin the prosecution of a case theretofore brought in a state court against a lessee of the United States to adjudicate the title of the United States to the same mineral rights, where the state proceeding threatens irreparable injury to the interests of the United States.

STATEMENT

Pursuant to a contract of purchase and sale of March, 1935, between the United States and the executors and trustees of the Estate of Joseph Leiter (R. 63-70), Thomas Leiter, as heir of Joseph Leiter, in December, 1938, conveyed to the United States approximately 8,711 acres of land in Plaquemines Parish, Louisiana (R. 75-83). The deed (R. 81-82) contained a mineral reservation identical to that contained in the 1935 agreement (R. 65-66), under which the grantor reserved until April 1, 1945, the right to mine and remove all valuable minerals. If for three years prior to April 1, 1945, mineral operations were conducted to commercial advantage for an average of 50 days a year, the mineral rights were to be extended for an additional five years to a tract of 25 acres around each well producing or being developed on April 1, 1945. The right to mine such tracts was to be extended for additional five-year periods whenever operations during the preceding five years had been for an average of 50 days a year. It was further provided, however, that on April 1, 1945, or at the termination

of any extended period, "the right to mine shall terminate, and complete fee in the land [shall] become vested in the United States." (R. 81-82.)¹ No mineral operations within the meaning of the reservation were ever conducted on the land by the vendor or the petitioner or anyone acting under or through them (R. 153).

In March, 1949, the United States issued oil and gas leases covering portions of the property conveyed to it by Leiter to Frank J. Lóbrano and Allen L. Lóbrano (R. 84-100). The Lóbranos granted the operating rights under these leases to The California Company (R. 33-42). That company, up to the time the present injunction was sought, had drilled 80 producing wells at an average cost of \$160,000 each, and was producing oil and gas in large quantities (R. 29, 153). The United States had then received more than \$3,500,000 in royalties (R. 153). Any interruption in the operation of these wells would cause irreparable damage to the United States (R. 153; see also R. 28-30).²

¹For convenient reference, the text of the mineral reservation is set forth in the Appendix, *infra*, pp. 46-47.

²The damage to be anticipated is disclosed by the joint affidavit of Elmer D. Hayman and Charles R. Blomberg, petroleum engineers employed by the California Company (R. 28-30). The affidavit concludes:

"That the first well on this property was completed in January of 1950, since which time The California Company staff of geologists, petroleum engineers and construction engineers have continuously studied the technical aspects of production from this field and have developed techniques which they consider will result in maximum recovery of oil and gas; that about

In August, 1953, petitioner commenced an action against The California Company and Allen J. Lobrano in the Twenty-Fifth Judicial District for the Parish of Plaquemines, Louisiana. Its complaint asserted (R. 101-102) that it was the owner of "All of the oil, gas and other minerals, and all of the oil, gas and mineral rights in, on or that may be under" the lands conveyed to the United States by Leiter in December 1938. Petitioner claimed title (R. 106-107) by virtue of the mineral reservation in that deed, a deed from Thomas Leiter to Humble Oil and Refining Company in October 1943, a deed from Humble to Leiter dated November 18, 1952, a deed from Leiter to petitioner dated November 24, 1952, and an act of confirmation, ratification and conveyance by Leiter to petitioner dated December 26, 1952. All of these

sixty-five percent of the wells which are producing oil on the lands purchased by the United States from Thomas Leiter are being operated by a gas injection method, whereby subsurface pressures are maintained in order to effect maximum recovery of producible oil; that the information developed by The California Company and the experience which it has attained in the operation of this particular oil field render it capable of more efficiently drilling and operating such field than any other operator; that the whole theory and approach to production employed by The California Company could be gravely interfered with and much potential production lost if a well were to be improperly located on the property, or if the overall scheme of gas injection, as related to production of oil, were interrupted or interfered with; that if possession of this oil field were taken away from The California Company, due to the complicated nature of the operation it would be impossible for even the most experienced and competent operator to continue or re-establish the operation of the field without permanent and irreparable loss."

instruments were recorded in Plaquemines Parish, and were attached to the state court complaint (R. 111-140).

The state court complaint also alleged (R. 108):

* * * that the rights of petitioner sued upon herein in and to all the oil, gas and other minerals under the lands described * * * are imprescriptible by virtue of Act 315 of the Louisiana Legislature of 1940 (R. S. 9:5806), and that petitioner now owns all of the oil, gas and other minerals, and is the owner of all the oil, gas and mineral rights, in, on and under said lands.

The prayer of the complaint (R. 109-110) was for a judgment against The California Company and Lobrano "recognizing" petitioner as the owner of the minerals and mineral rights involved and that as such owner it was entitled to full and undisturbed possession thereof, and "ordering the defendants * * * to deliver possession of said property to" petitioner. There was a further prayer for an accounting of the minerals removed and a consequent judgment for their value.

In March, 1954, the United States commenced the present action against petitioner in the federal district court and named as additional parties defendant Allen L. Lobrano, one of its mineral lessees, the heirs of its other mineral lessee, Frank J. Lobrano, deceased, and The California Company. Its complaint (R. 1-17), after stating the substance of the foregoing, averred (R. 14) that the state court suit—

is an attempt by defendant herein to have the title of the United States of America adjudicated upon directly in that proceeding and to wrest possession of the property away from the United States therein, all to the permanent and irreparable injury and detriment of the United States.

The complaint prayed in substance for a judgment (1) quieting the Government's title to the minerals and mineral rights, (2) canceling, as clouds on that title, the instruments by virtue of which petitioner claimed title and (3) granting preliminary and permanent injunctions against prosecution of the state court suit (R. 15-16).

On April 3, 1954, the United States applied for a temporary restraining order against prosecution of the state court suit (R. 18-19). The supporting affidavit of the United States Attorney (R. 19-22) disclosed the following:

In December, 1953, the defendants in the state court suit, namely, the lessees of the United States, had filed exceptions challenging the legal sufficiency of petitioner's complaint therein on the ground among others that, since it sought a judgment that the United States did not own the minerals, it was a suit against the United States (R. 21-22, 143-144). On March 17, 1954—the date the Government's action was filed in the federal court and while the exceptions were still pending—the United States Attorney had informed the state court of the filing of the federal action (R. 20). However, on March 23, 1954, the state court entered judgment overruling the exceptions (R. 145-

149) on the ground that by virtue of the Louisiana Act 315 of 1940 petitioner's complaint "discloses both a legal right of action and a cause of action."

On April 3, 1954, the federal district court granted a 10-day restraining order (R. 22-23) which thereafter was indefinitely extended (R. 23-24), and on April 6, 1954, petitioner moved to dismiss this suit or to stay proceedings in it until the state court suit had been determined, on the ground that the state court had previously assumed jurisdiction "of this controversy" and of the property involved (R. 25-26).

A hearing on the Government's motion for a preliminary injunction and petitioner's motions to dismiss or stay was held on May 21, 1954, when evidence establishing the foregoing facts was introduced (R. 44-152), and thereafter the district court filed its opinion (R. 152-163) and an order denying motions of petitioner to dismiss or stay proceedings in the Government's suit, and granting a preliminary injunction against further prosecution of petitioner's state court action, pending determination of the action in the federal court or until further order of that court. Upon appeal, the order of the district court was affirmed (R. 181). This Court granted certiorari on February 27, 1956 (R. 182).

SUMMARY OF ARGUMENT

1. The federal district court, upon the filing of the Government's action to quiet title to the mineral rights, acquired exclusive jurisdiction. The courts below correctly held that the issue on the merits, *i. e.*, title to the rights, is an issue between petitioner and

the United States. Petitioner concedes that the Government's action in the federal court and petitioner's action in the state court both raise the issue of the title of the United States. The Government is an indispensable party to a determination of that title question since it can be settled only in a court having jurisdiction of all interested parties, including the United States. Hence, when the Government filed its action in the federal court, as it was entitled to do under 28 U. S. C. 1345 (*supra*, p. 2), naming all other parties as defendants, the lower court became vested with jurisdiction to try the title issue, and since it is the only court having before it all indispensable parties, it was the only court having jurisdiction.

2. The state court, since it did not have before it the United States, lacked jurisdiction. The proposition that a suit which seeks an adjudication of the title of the United States is in fact a suit against the United States and beyond the jurisdiction of any court, absent the consent of Congress, is established by a series of decisions of this Court ranging from *Stanley v. Schwalby*, 162 U. S. 255, to *Larson v. Domestic & Foreign Commerce Corp.*, 337 U. S. 682.

In view of the conceded fact that the state court action seeks an adjudication of the Government's title, there is no necessity for consideration of the merits in determining the question of the jurisdiction of that court. In *Land v. Dollar*, 330 U. S. 731, and *United States v. Lee*, 106 U. S. 196, where the Court did consider the merits in determining jurisdiction, the issue was not one of title but of possession only; these cases are not exceptions to the general rule that the Govern-

ment's title cannot be litigated behind its back, and do not require that the merits be considered here. But, if the merits should be considered pertinent in the case at bar, an examination of those issues leads to the same conclusion, that the United States is in fact the real owner of the mineral rights in question and is therefore a necessary party.

Petitioner's basic proposition that jurisdiction in the state court can be founded on the premise that the action there is *in rem* is without merit. This Court has held in express terms that the immunity of the United States extends not only to it as an entity but also to its property. *Stanley v. Schwalby*, 162 U. S. 255; *Minnesota v. United States*, 305 U. S. 382. The state court had no more jurisdiction to determine the title to the land in which the United States claimed an interest than to adjudge any other right of the United States.

Likewise, petitioner's suggestion that the United States or its property could through intervention be submitted to the jurisdiction of the state court in petitioner's proceeding has in terms been rejected in the two cases just cited, as well as in others. See *Carr v. United States*, 98 U. S. 433; *United States v. Shaw*, 309 U. S. 495; and *United States v. U. S. Fidelity & Guaranty Co.*, 309 U. S. 506. Since it is a matter of federal sovereign immunity and thus a question of power, Louisiana rules of procedure, either as to intervention or as to allowing suit in the absence of the lessor as a party, are irrelevant. Neither is petitioner's argument that the United States must be remitted to the state court supported by anything said in *United States v. Bank of New York & Trust Co.*,

296 U. S. 463. That case dealt with a wholly dissimilar situation and rests upon its special facts, and the decision, neither in terms nor by implication, suggests that the rule of *Stanley v. Schwalby*, 162 U. S. 255, is not still the law in the factual situation here presented.

3. Exclusive jurisdiction being vested in the federal court, and both courts below having found that serious and irreparable damage to the property rights of the United States was threatened by prosecution of the state court action, issuance of an injunction simply to preserve the status quo pending ultimate and authoritative determination of the merits in the only proceeding able to settle the matter conclusively—in the federal courts—was clearly justified and in aid of the jurisdiction of the courts below. Such injunctions have previously issued in federal courts in a variety of situations where, as here, after the commencement of state court action against its officers threatening its rights, the Government commenced proceedings in the federal courts.

28 U. S. C. 2283, barring injunctions against state court proceedings except where authorized by statute or in aid of the federal courts' jurisdiction, does not apply to the United States (which is not named) under the well-established doctrine recently redeclared by this Court in *United States v. United Mine Workers*, 330 U. S. 258, and in *United States v. Wittek*, 337 U. S. 346. Even if 28 U. S. C. 2283 be regarded as applicable to the United States, the injunction still is clearly justified as in aid of the jurisdiction of the federal district court. *Amalgamated Clothing Workers v. Richman Brothers Co.*, 348 U. S. 511, is not author-

ity to the contrary since there no federal proceeding, exclusive of the application for an injunction, had been commenced and there was therefore no federal court jurisdiction to protect.

Petitioner's argument that the federal proceeding should be stayed and the state court action allowed to proceed "in any event" because a question of local law, the interpretation of Louisiana Act 315, may be determined by the state tribunals in such a way as to avoid constitutional questions is without merit. The first question, the construction of the contract, is a question of federal law. The fact that a question of local law may also be involved does not bear on the exclusive jurisdiction of the federal court, on the one hand, or cure want of jurisdiction in the state court, on the other. While the abstract "principle of abstention" invoked by petitioner is in no wise challenged by the Government, its employment in the present situation as an instrument to permit suit against the United States without its consent, the result contended for by petitioner, was properly rejected below and should be rejected here.

ARGUMENT

Both courts below have disposed of the case on the same theory of decision, as follows: The title to the mineral rights is an issue between petitioner on the one hand and the United States on the other; when the United States filed its complaint in the federal district court, naming as defendants the petitioner and all other interested parties, that court was vested with exclusive jurisdiction to determine the title question; the suit instituted by petitioner in the Louisiana

state court, seeking an adjudication of the same issue, though nominally against Government lessees, was in fact a suit against the United States, to which the United States was not a party, and could not be made a party; and that, since Congressional consent to the bringing of such a suit was lacking, the suit was beyond the jurisdiction of the state court. Both courts below, having found that irreparable damage would result if the state court action proceeded and resulted in the ouster of the Government's lessees from possession, concluded that the federal court could and should protect its jurisdiction by enjoining further prosecution of the state court action pending decision by the federal court on the merits, or further order of that court.

In the circumstances of this case, where the United States instead of maintaining its immunity from suit has submitted the issue for judicial determination, and where the United States is powerless to protect its rights in the state court proceeding, the conclusion that the jurisdiction of the federal court should be protected is entirely justified.

I

THE FEDERAL DISTRICT COURT HAS EXCLUSIVE JURISDICTION TO DETERMINE THE TITLE OF THE UNITED STATES TO THE MINERAL RIGHTS CLAIMED BY PETITIONER

Since any rights which petitioner may have rest on the mineral reservation in its predecessor's contract with, and deed to, the United States, and since the United States continues to hold title pursuant to the deed, it is clear that the issue of title to the mineral rights is an issue between petitioner and the

United States. As stated by the court of appeals (R. 179), "Obviously the controversy as to title is between the appellant [petitioner] and the United States, not between the appellant and the Government's mineral lessees, and from this it follows that the United States is an indispensable party." Indeed, petitioner in its petition for a writ of certiorari (p. 3) and in its brief (p. 2) states that the "subsidiary questions" upon which the case turns are "(1) whether the United States District Court has exclusive jurisdiction to determine the title of the United States to real property; or (2) as petitioner contends, whether the United States may be required to intervene in the previously instituted *in rem* suit pending in the State Court." This is a forthright acknowledgment that the issue on the merits is the same, in both the federal court and the state court actions and that petitioner's action in the state court seeks an adjudication that the United States does not have title.

Jurisdiction to try the Government's title can exist only in a court which has jurisdiction of the United States. The provisions of 28 U. S. C. 1345 (*supra*, p. 2) confer original jurisdiction on the United States district courts of all civil actions commenced by the United States as plaintiff. When the United States brought suit in the district court to quiet title, that court obtained jurisdiction over all the interested parties as well as over the subject matter. The United States, of course, could have filed a separate and independent action, as plaintiff, in the Louisiana state

court for Plaquemines Parish to have its title to the mineral rights determined, but it did not choose to do this and filed the present action instead, as it had every right to do under the statutory provision cited above.* It is not a party to the pending action in the state court against its leasee, and, as is pointed out below (*infra*, p. 17), cannot properly protect its rights in that court through intervention. Consequently, when this action was instituted, the federal district court became vested with exclusive jurisdiction to adjudicate with respect to the mineral rights of the United States since it was the only court which had any legal power or authority to pass upon the Government's title.

As the district court stated in its opinion (R. 159):

* * * the United States has decided to come into this court under 28 U. S. C. 1345 and ask that its title claim to the property in question be adjudicated, and that pending adjudication the proceedings brought in the state court against

* Since the United States is thus given the clear right to enter the federal courts, it is not necessary that the Government justify its election to enter those courts for the vindication of its rights. But we point out that in doing so in this instance the Government was following a long-established policy. Thus, where Congress has waived federal immunity and consented that the United States may be sued it "has provided generally for suits against the United States in the federal courts," and a consent statute which does not in terms authorize a suit in the state courts will be construed as limited to federal courts. *Minnesota v. United States*, 305 U. S. 382, 388-389. The genesis of this policy was stated as early as 1821 in *Cohens v. Virginia*, 6 Wheat. 264, 387. Moreover, this case on the merits involves important federal questions (*infra*, pp. 43-44), a sufficient reason for the Government's presenting the case to federal, rather than state, courts.

its mineral lessees be enjoined. Not only has the United States a right to proceed thusly, but an injunction should be issued to protect the jurisdiction of this court, pending determination of the ownership of the property in suit.

All the parties necessary to make this determination are before this court. The United States, an indispensable party insofar as the state proceedings seek to adjudicate title to the property, is not before the state court. Consequently, since the state court action cannot settle this contest for ownership of these mineral rights between Leiter Minerals and the United States, further proceedings therein can only impinge on the jurisdiction of this court and confuse the real issues in suit.

This jurisdiction was not concurrent with that of the Louisiana state court, which could not validly determine the title of the United States in the action pending before it since the United States was not, and could not be, a party to that action. See Point II, *infra*, pp. 22-35.

The court below had occasion to pass upon a somewhat similar situation in the case of *United States Department of Agriculture v. Hunter*, 171 F. 2d 793 (C. A. 5). In that action it appeared that Hunter and others had acquired certain lands from the United States by quitclaim deeds in which the Government reserved certain mineral, oil and gas rights. The Government's grantees claimed that the mineral reservations in the deeds were invalid and unlawful and filed an action against the Secretary and the Department of Agriculture to quiet their title to the mineral

rights and to remove clouds upon their asserted title. The court reversed and set aside a judgment of the district court in favor of the plaintiffs and directed that the complaint be dismissed, and stated at pages 794-795:

If the deeds ought to be reformed or the reservation ought to be cancelled or a new quitclaim ought to be made under the later statutes, supposing them to be applicable, the United States ought to be in court if it has consented to be sued; and if not, since the whole result of the decree is to transfer from the United States to the plaintiffs three-fourths of the minerals, oil and gas in the lands, the court had no power to accomplish this. [Emphasis added.]

Furthermore, the United States cannot lawfully intervene in the pending state court action as a party defendant (as distinguished from bringing its own suit as plaintiff).⁴ This is so because no officer or agent of the United States has any power or authority to submit the United States to suit in a case of this kind, and any judgment rendered under such circumstances by the Louisiana courts concerning the validity of the title of the United States would not be binding on the United States. A case directly in point is *Stanley v. Schwalby*, 162 U. S. 255. In that case the plaintiff had filed an action in a Texas state court to try title to certain land which was occupied

⁴If the United States had sought to intervene it would have had to be as a party defendant since its interests are adverse to those of the plaintiff, and fully compatible with those of the defendants. See *infra*, pp. 33-34.

by the defendants who were federal officers. The Attorney General intervened in the action in behalf of the United States and claimed that the United States had title to the property. It was held that "no suit can be maintained against the United States, or against [its] property, in any court, without express authority of Congress," and (p. 270) that the Attorney General had no authority to litigate the title of the United States in the state court action and that the judgment of the Texas court which decreed that the United States did not have title to the property was void as to the United States.

The facts of that case are the same from a legal standpoint as in the case at bar, and the *Schwalby* decision, relied upon by both courts below (R. 156, 162), has been cited repeatedly by this and other courts (and as recently, for example, as in *Larson v. Domestic & Foreign Commerce Corp.*, 337 U. S. 682, 689 (fn. 9)) for the proposition that where federal officers are sued to try the issue of title to property and the real party in interest on that question is the United States, there exists no jurisdiction to entertain the suit in the absence of Congressional consent—that there is a complete lack of authority to submit the United States or its property to such a suit, and that accordingly the suit must be dismissed. The same must be true where the nominal defendants are lessees rather than federal officials.

Petitioner erroneously suggests (Br. 31, fn. 29) that this Court's disposition of the *Schwalby* case indicates that the title issue could be decided on the merits

in the absence of the Government. But the judgment of the state court there under review had a double aspect in that (a) it adjudged title to one-third of the property to be in the plaintiff and (b) adjudged plaintiff entitled to joint possession of the whole with the individual defendant officers. As we have stated, in dealing with the title aspect of the judgment, the Court, without reference to the merits, held that the United States had not consented to a suit and had reposed no power in anyone to submit it or its property to suit, and the Court disposed of this portion of the judgment (162 U. S. p. 272) on the ground that, so far as it adjudicated title, the judgment was "against the United States and * * * their property * * *". And the Court's order that the action be dismissed "as against the United States," construed in the light of the foregoing, clearly meant that there was no jurisdiction to try the title in the absence of the Government. The case therefore is dispositive here since petitioner concedes that, in its attempted state court suit, the title issue, under Louisiana law, must be adjudicated.⁵

⁵ It is true that ultimately the Court considered the merits in the *Schwalby* case. But this was after the title adjudication had been rejected for want of jurisdiction, as above noted, and was undertaken only in connection with the remaining part of the state court judgment dealing with possession. The Court had first recognized (p. 271) that the decision in *United States v. Lee*, 106 U. S. 199, sustained jurisdiction in a suit against officers for possession only, but rejected it as sustaining jurisdiction as to title. It then noted that (unlike the Louisiana law under which petitioner concedes title must be adjudicated) Texas law permitted an adjudication of possession alone or of both possession and title, and that the judgment there being reviewed undertook to adjudicate both title and possession. And, after striking down

Another case in point is *Minnesota v. United States*, 305 U. S. 382. There the State of Minnesota had instituted condemnation proceedings in its own courts to obtain a right of way across lands to which the United States held title in trust for certain Indians, and named the United States as an interested party to the proceedings. The case was removed to the federal court upon application of the United States Attorney who had appeared specially in the state court in behalf of the United States. It was held that the state court lacked jurisdiction of the subject matter insofar as the United States was concerned and the federal court acquired no more jurisdiction than the state court had in the first instance. The reasons for this holding were that the United States was an indispensable party to the condemnation proceedings since "a proceeding against property in which the United States has an interest is a suit against the United States" (p. 386), and the United States had not consented to be sued in the state court. The court further stated (p. 389):

Where jurisdiction has not been conferred by Congress, no officer of the United States has power to give to any court jurisdiction of a suit against the United States.

the title adjudication as a judgment against the United States, it then proceeded to a consideration of the merits "with a view to the ultimate determination of [what remained of] the case," that is, the award of joint possession with the officer defendants. It thus did no more than apply the *Lee* case in disposing of the issue of possession and awarded judgment for the defendants with costs.

These principles were further illustrated and extended in the case of *United States v. Shaw*, 309 U. S. 495, in which it was held that even where the United States properly asserts a claim in a state court proceeding the state court lacks jurisdiction to grant an affirmative judgment against the United States. And in *United States v. U. S. Fidelity & Guaranty Co.*, 309 U. S. 506, the United States, represented by the United States Attorney, had failed to appeal from a judgment rendered against it in certain reorganization proceedings in which it had participated. In a subsequent action filed by the United States to collect the balance of a claim from the surety of the debtor in whose favor the judgment against the United States had been rendered in the reorganization proceedings, it was held that the United States was not bound by the prior judgment even though the United States was properly a party in the reorganization proceedings and had failed to appeal from the judgment against it. Cf. *Carr v. United States*, 98 U. S. 433.

It is clear, therefore, that a court may make a valid adjudication of the title of the United States only in an action in which the United States is plaintiff. In view of the foregoing, it is apparent that the federal district court has exclusive jurisdiction of this action.

II

THE LOUISIANA STATE COURT LACKS JURISDICTION TO
DETERMINE THE TITLE OF THE UNITED STATES.

A. THE SUIT FILED BY PETITIONER IN THE LOUISIANA COURT IS IN FACT A SUIT AGAINST THE UNITED STATES, TO WHICH THE UNITED STATES IS NOT A PARTY AND, ABSENT CONGRESSIONAL CONSENT, CANNOT BE MADE A PARTY, AND THE STATE COURT IS THEREFORE WITHOUT JURISDICTION

As we have previously noted (*supra*, p. 14), petitioner makes no pretense that the basic issue in the proceeding filed by it in the Louisiana court against the Government's lessees is different from the issue in the federal court action filed against petitioner by the United States, that is to say, whether the United States or petitioner owns the mineral rights. Petitioner cannot do otherwise since there can be no doubt that in the state court action petitioner seeks an adjudication that title is in it.* It is clear, therefore, that petitioner's action in the state court directly affects the property rights of the United States.

The conclusion of both courts below (R. 155-156, 179) that the state court acquired no jurisdiction to determine title is supported by a long line of decisions

* Under Louisiana practice an adverse claimant to real estate who is out of possession, as is petitioner here, must bring a "petitory" action known as "an action of revendication" in which the plaintiff must establish its title (as distinct from a right of possession) or else its entire claim fails. (Arts. 43, 44, La. Code of Practice).

of this Court. The law is firmly settled that a suit which seeks an adjudication of title to property of a sovereign or to interfere with the use and disposition by the sovereign of its property is a suit against the government, and that, absent Congressional or legislative consent, such a suit is beyond the jurisdiction of any court. *Carr v. United States*, 98 U. S. 433, 437-438; *Cunningham v. Macon & Brunswick R. R. Co.*, 109 U. S. 446, 457; *Christian v. Atlantic & N. C. R. R. Co.*, 133 U. S. 283; *Belknap v. Schild*, 161 U. S. 10; *Stanley v. Schwalby*, 162 U. S. 255; *Minnesota v. Hitchcock*, 185 U. S. 373; *Oregon v. Hitchcock*, 202 U. S. 60; *Naganab v. Hitchcock*, 202 U. S. 473; *Louisiana v. Garfield*, 211 U. S. 70; *Hopkins v. Clemson College*, 221 U. S. 636, 648-649; *Goldberg v. Daniels*, 231 U. S. 218; *Lankford v. Platte Iron Works*, 235 U. S. 461; *New Mexico v. Lane*, 243 U. S. 52; *Morrison v. Work*, 266 U. S. 481, 485-486; *Cummings v. Deutsche Bank*, 300 U. S. 115, 118; *Minnesota v. United States*, 305 U. S. 382; *United States v. Shaw*, 309 U. S. 495; *United States v. U. S. Fidelity & Guaranty Co.*, 309 U. S. 506; *Mine Safety Appliance Co. v. Forrestal*, 326 U. S. 371; *Larson v. Domestic & Foreign Commerce Corp.*, 337 U. S. 682.

In the *Larson* case, this Court (337 U. S. at pp. 687-688) declared that:

The question [of whether a given suit is in fact a suit against the United States] becomes difficult and the area of controversy is entered when the suit is not one for damages but for

specific relief: *i. e.*, the recovery of specific property or monies, ejectment from land, or injunction either directing or restraining the defendant officer's actions. In each such case the question is directly posed as to whether, by obtaining relief against the officer, relief will not, in effect, be obtained against the sovereign. For the sovereign can act only through agents and, when an agent's actions are restrained, the sovereign itself may, through him, be restrained. As indicated, this question does not arise because of any distinction between law and equity. It arises whenever suit is brought against an officer of the sovereign in which the relief sought from him is not compensation for an alleged wrong but, rather, the prevention or discontinuance, *in rem*, of the wrong. In each such case the compulsion, which the court is asked to impose, may be compulsion against the sovereign, although nominally directed against the individual officer. If it is, then the suit is barred, not because it is a suit against an officer of the Government, but because it is, in substance, a suit against the Government over which the court, in the absence of consent, has no jurisdiction.

It is submitted that the compulsion which the Louisiana court is asked to exercise in petitioner's suit is "compulsion against the sovereign [the United States]" although nominally the suit is directed against the Government's lessees; that being true, the state court action is in fact against the United States, and since the United States has not consented thereto, such suit was beyond the jurisdiction of the Louisiana court.

B. TREATING THE CASE AS ONE IN WHICH THE MERITS MAY BE LOOKED TO IN DETERMINING JURISDICTION, THE CONCLUSION THAT THE STATE COURT ACTION IS IN REALITY A SUIT AGAINST THE UNITED STATES IS CONFIRMED -

It is true, of course, that in the *Larson* case this Court did observe (337 U. S. at p. 690) that "the jurisdiction of the court to hear the case may depend, as we have recently recognized, upon the decision which it ultimately reaches on the merits." However, beyond citing the decision in *Land v. Dollar*, 330 U. S. 731, this Court did not there indicate the circumstances when such an examination of the merits may be relevant to a determination of the jurisdictional question. *United States v. Lee*, 106 U. S. 196, is another case where this Court turned its decision on the jurisdictional question upon a consideration of the merits. In both the *Dollar* and *Lee* cases the suits were technically for possession only. And since, as petitioner forthrightly concedes, its suit in the state court does seek to adjudicate the title of the United States, that fact is conclusive against petitioner's contention that the state court has jurisdiction, and resort to a consideration of the merits is neither necessary nor justified. See the long line of cases cited *supra*, p. 23.

But if the court should consider the merits, the express contract of purchase and resulting deed from Thomas Leiter, under whom petitioner claims, support the Government's case. This document contained the mineral reservation set out in the Appendix (*infra*, pp. 46-47). The deed (R. 75-82) is unambig-

uous. It clearly does the following: Thomas Leiter, for a stated consideration, conveyed the property in suit to the United States (R. 75), subject to a mineral reservation until April 1, 1945, in favor of Leiter. Under that reservation (R. 81-82; App., *infra*, pp. 46-47), Leiter had the right to mine and remove minerals for a period expiring on April 1, 1945. That period would be extended only if mineral operations meeting certain stated requirements had been conducted during the three years preceding April 1, 1945. It is unquestioned in this case that "neither Thomas Leiter, Leiter Minerals, Inc., nor any other person acting through or under them has ever conducted any mineral operations of any kind pursuant to the reservation of the mineral rights in the deed to the United States" (R. 153). It has never been suggested that there were any mineral activities prior to the successful development by the Government's lessees. It is thus apparent that no extension beyond April 1, 1945, ever matured and that the rights expired as of that date. On the result which followed in this situation the deed specifically provided as follows (R. 82; App., *infra*, p. 47):

Provided that at the termination of the ten (10) year period of reservation, if not extended, * * *, the right to mine shall terminate, and complete fee in the land become vested in the United States.

Clearer words cannot be devised; on April 1, 1945, under an express contract of the United States, the Government acquired an absolute fee to the property

here in question, including minerals and all other interests.⁷

Since the United States acquired the mineral rights by contract, petitioner's reliance on Louisiana Act No. 315 of 1940 presents a second fundamental federal question of the power of the state in 1940 to destroy contract rights validly acquired by the United States in 1935. As to this we submit that, under our constitutional scheme, the assertion of such power falls of its own weight, and it is clear that, if construed as impairing the contract of the United States, the statute is unconstitutional under Article 1, Section 10, Clause 1, and beyond the power of Louisiana or any other state of the union.⁸

The decision of the court below in *United States v. Nebo Oil Co.*, 190 F. 2d 1003 (C. A. 5), relied upon by petitioner (Br. 38), lends no support whatever to petitioner's claim to the minerals here. There the grantor of the United States had, prior to conveying the land to the Government, conveyed the minerals in the property to another in perpetuity, and the subsequent conveyance to the United States was expressly subject to that prior disposition of the minerals. There was therefore no contract right of the United

⁷ While Louisiana law is irrelevant and federal law governs (*infra*, p. 43), it is clear that the language here in question, under that law or the law of any other state, could not have any meaning other than that we have ascribed to it.

⁸ There is no state interpretation of the state statute which can support petitioner's claim and, at the same time, avoid the constitutional question of the power of the state to control the federal title.

States ever to acquire the minerals. Its grantor no longer owned them and the Government was on express notice of that fact as well as the fact that they were not included in the grant. Consequently the Government's claim was bottomed solely on the prescriptive, non-user statutes of Louisiana. The court below did not, therefore, hold in the *Nebo* case that Act No. 315 could impair a contract right of the United States, but that the prescriptive laws of Louisiana, upon which alone the Government could there rely, were in the nature of statutes of limitation, created ~~no~~ contract right, and could be modified or repealed at the will of the state. This the court below spelled out in concluding its opinion (p. 1010).

* * * All that Bodcaw [the Government's grantor] had which it could sell to the United was the timber land itself. That was the obligation of the contract and it remains unimpaired. By virtue of its ownership of the land appellant could merely hope that the outstanding servitude might lapse but this hope or expectancy was born of a statute of prescription based on the then existing public policy of the State as declared by its legislature. It was not a part of the obligation of the contract. It was wholly given by law and the power that gave it could increase, diminish, or otherwise alter, or wholly take it away without violating the Federal Constitution.

Here the Government's right is bottomed squarely on an express contract, depends in no degree upon the law of Louisiana, and we think the implication is clear in the above quotation that, had that been true

in the *Nebo* case, the court below would have had no trouble in concluding that such a right was protected completely by the Constitution.

The precise question was, however, reached in *Hickman v. United States*, 135 F. Supp. 919, rehearing denied, 140 F. Supp. 759 (W. D. La.). There, as here, plaintiff's predecessor sold to the United States certain land. The deed in express terms reserved mineral rights for a period of ten years and for extended periods if certain conditions relating to commercially profitable mineral operations were met. There as here, also, it was provided that at the end of the 10-year period, or any extended period, if such conditions were not met, the rights reserved were to terminate "and a complete fee in the land [shall] become vested in the United States." The plaintiff sued the United States under the Tucker Act for a money judgment, based upon bonus money or royalties paid under a government lease subsequently issued, but the district court dismissed for want of jurisdiction, the court observing that (135 F. Supp. p. 919) the plaintiffs were "nominally seeking a small money judgment against the United States, but actually and indirectly presenting for adjudication the legal title to a certain mineral servitude." And in meeting and rejecting arguments advanced by plaintiffs in support of their motion for rehearing, the court stated (140 F. Supp. 760):

If they rely upon the contract *and* the statute, which they actually are doing, this Court has no jurisdiction because the express terms of the

contract, limiting the life of the servitude to ten years in the absence of development, would be rendered nugatory by the Act of 1940, *without the Government's consent*: a quasi-contract.

* * * But this contract was not silent! It spoke clearly on the very subject that is here chiefly involved, namely, the term of the servitude. The Act of 1940 would nullify that highly important provision of the contract, and in doing so, it would create a new contract and supply a consent that never existed—a quasi-contract forced upon the Government by legislative fiat.

We contend, therefore, that the United States is clearly the owner of the minerals and the state court action filed by petitioner is in reality and fact a suit against the Government under either of the two approaches to that question and, since no consent by Congress has been given, that court could acquire no jurisdiction of the suit.

C. PETITIONER'S CONTENTION FOR JURISDICTION IN THE STATE COURT IS UNTENABLE

Petitioner's contention that the state court acquired jurisdiction is bottomed squarely on the assertion (Br., Point II, p. 21 *et seq.*) that the action there filed was an action *in rem*, and that accordingly the United States is remitted to that court. We do not accept, even for purposes of argument, the assertion that the suit in the state court is an *in rem* proceeding, but whether *in rem* or not it is of no different character in this respect than the many cases cited below (*infra*, p. 37) wherein suits were instituted against

federal officers to establish title to property in possession of the United States, and where the real parties to the issue of title were the plaintiff and the United States, not its officers or agents. Surely those cases are not now to be disowned on the argument that, although the federal government as an entity is clothed with sovereign immunity from suit, that immunity can be circumvented by proceeding against its property and in its absence. The principle is too well settled that sovereign immunity cannot be avoided, where the title to government property is in issue, by proceeding against an official or other agent of the sovereign. For instance, to cite but two of the many cases, in *Stanley v. Schwalby*, 162 U. S. 255, 269-270, the Court stated that "It is a fundamental principle of public law, affirmed by a long series of decisions of this court, and clearly recognized in its former opinion in this case, that no suit can be maintained against the United States, or against their property, in any court, without express authority of Congress," and that "Neither the Secretary of War nor the Attorney General, nor any subordinate of either, has been authorized to waive the exemption of the United States from judicial process, or to submit the United States, or their property, to the jurisdiction of the court in a suit brought against their officers." (Emphasis added.)

Again, in *Minnesota v. United States*, 305 U. S. 382, a true *in rem* proceeding was consented to by Congress when it consented to condemnation proceedings against Indian lands. That the consent of

Congress was essential to maintenance of such a suit was made clear by this Court's statement (pp. 386-387) that "a proceeding against property in which the United States has an interest is a suit against the United States," and that "Minnesota cannot maintain this suit against the United States unless authorized by some act of Congress." That the consent of Congress was a *sine qua non* to jurisdiction was further emphasized by the ruling that the consent there given must be strictly followed, that it did not permit proceedings to be brought in any but a federal court, and that the action begun in the state court must be dismissed for lack of jurisdiction.

If it is true, as we believe we have shown, that by any standard of testing the question, petitioner's state court action involves a property right "in which the United States has an interest," that right is as immune from attack, absent Congressional consent, as is the United States, and the necessity of consent in the case at bar cannot on any theory be dispensed with.

Proceeding from its insupportable proposition that title to federal property can be attacked without the consent of the Government, petitioner argues (Br. 23-28) that the United States could, and must, be remitted to the state court proceeding in order to defend its rights, relying almost exclusively on the authority of this Court's decision in *United States v. Bank of New York & Trust Co.*, 296 U. S. 463. We shall discuss this case in greater detail *infra*, pp. 41-42. Here it suffices to point out that the state proceeding in that case was not in any sense a suit

against the United States since the United States had no claim to the funds there involved when the state proceedings were commenced. The *claim* of the United States—which was, of course, not in possession of the property—arose long after the state court had assumed control over the property. The *res* in question being thus committed by the New York courts to the custody of their officials, the federal court could not deal with it without disturbing the actual possession of the state courts. The United States could submit its claim to determination by the state court in the liquidation proceedings since it would thereby be asserting a claim to property not in its possession, not submitting to be sued with respect to property now in its possession (as here). The cases are thus clearly distinguishable.

The petitioner's citation of Article 392 of the Louisiana Code of Practice as proof that the United States would under state law be "considered as plaintiff" (Br. 28) is clearly inaccurate. The section referred to, which is quoted in full at page four of petitioner's brief, refers to "the plaintiff in intervention" and then states that he shall be considered as a plaintiff with respect to the jurisdiction of the defendant. But Article 389 of the Louisiana Code of Practice makes it clear that an intervener may become a party either "by joining the plaintiff in claiming the same thing, or something connected with it, or by uniting with the defendant in resisting the claims of the plaintiff, or, where his interest requires it, by opposing both." In this case, the United States would be "uniting with the defendant in resisting the

claims of the plaintiff" and would therefore be a defendant in intervention under state practice rather than a plaintiff in intervention. Moreover, the question is one of power, not of procedure, and the lack of power in any federal official so to submit the United States or its property to the jurisdiction of any court as a defendant is not supplied by anything Louisiana law may provide. It would in fact be defending against the claim brought by petitioner. And petitioner's suggestion (Br. 29) that 5 U. S. C. 316 supplies such authority to the Solicitor General of the United States misreads that section, since obviously Congress was not delegating to the Solicitor General its entire power to consent to being sued.

Finally, on this point petitioner argues (Br. 30-33) that under Louisiana law, as interpreted in *Dreux v. Kennedy*, 12 Robinson (La. Reps.) 489, a title action may be maintained against an oil and gas lessee without the presence of the lessor. If, as we have shown, the state court action is a suit against the United States, Louisiana law is irrelevant. Petitioner is arguing that under Louisiana law the maintenance of the action does not require consent. We are here dealing with sovereign immunity of the United States, and that immunity clearly would not exist if it were subject to the will of any state. It is again a question of power, and the power to submit the United States or its property to suit resides in only one source, the United States itself, speaking through its Congress. Congress has neither consented to suit in this case, nor has it indicated a willingness to leave that im-

portant decision in any class of cases to Louisiana or the other states."

III

ISSUANCE OF THE INJUNCTION WAS AN APPROPRIATE EXERCISE OF JUDICIAL POWER UNDER THE CIRCUMSTANCES OF THIS CASE

There is, as we believe we have shown, jurisdiction in the federal district court of the suit filed by the United States. The court of appeals stated (R. 179):

* * * We have no misgivings as to the sufficiency of the complaint and believe that the appellee is on firm ground in contending that in this suit, wherein the United States is plaintiff, the district court under the clear provisions of the statute (28 U. S. C. § 1345) became vested with exclusive jurisdiction to determine the title of the United States to the mineral

* In a supplemental brief in support of its petition for a writ of certiorari, and in its brief now before the Court (pp. 31-33), petitioner cites an unreported decision of the court of appeals below, superseded by the decision in *Gulf Refining Company v. Isaac R. Price, et al.*, 232 F. 2d 25, and argues that this decision was inconsistent with the case at bar. In that case the court below, on the strength of *Dreux v. Kennedy, supra*, held that the State of Louisiana was not an indispensable party to maintenance of an action against an oil and gas lessee of the state. In the first place, as petitioner concedes (Br. 32), that decision was withdrawn by the court below on the ground that no such issue was raised by the pleadings. 232 F. 2d 25. In its earlier decision the court below may have reasoned that Louisiana law, as interpreted by its own courts, was competent to and did settle the question as to whether a lessee of the state could be sued in the absence of the state as party. Such a result warrants no implication that the court has abandoned the views expressed in the instant case since here Louisiana law is irrelevant and federal immunity is involved.

rights claimed by appellant. All the parties necessary to make this determination were before the court and the court had jurisdiction to grant the relief prayed. *Humble Oil & Refining Co. v. Sun Oil Co.*, 5 Cir., 191 F. 2d 705.

That being so, the district court had inherent power and authority to protect that exclusive jurisdiction, and where, as here, both courts below have found (R. 159-160, 180) that irreparable damage to the property is threatened if the state court action proceeds, issuance of the injunction was not only clearly proper but quite necessary to protect the undoubted jurisdiction of the federal court by preserving the status quo.¹⁰ As stated by the district court (R. 159):

* * *, since the state court action cannot settle this contest for ownership of these mineral rights between Leiter Minerals and the United States, further proceedings therein can only impinge on the jurisdiction of this court and confuse the real issues in suit.

There can be no question of the existence of that power in the federal courts,¹¹ and the question here, as in every other case, is as to the appropriateness of its

¹⁰ In this Court, petitioner challenges the findings of both courts below that there would be irreparable damage by suggesting (Br. 34) that ouster of the federal lessees might be avoided by the taking of a "suspensive appeal." But obviously this affords no positive protection to the Government since its lessees may or may not be able or willing to post the heavy bond which would be required. Nor is there any firm assurance that the lessees would appeal from an adverse decision.

¹¹ This Court recently exercised it in *United States v. Louisiana*, 351 U. S. 978, now pending in this Court.

exercise. The instant case is typical of many in which the United States, after action has been instituted against its property, has brought its own action in the federal courts, thus providing a forum which alone could authoritatively settle the issues raised, and in such cases the federal courts have issued preliminary injunctions to preserve the status quo. *United States v. McIntosh*, 57 F. 2d 573, 576-578 (E. D. Va.); *United States v. Cain*, 72 F. Supp. 897, 899 (W. D. Mich.); *United States v. Phillips*, 33 F. Supp. 261 (N. D. Okla.); *Brown v. Wright*, 137 F. 2d 484, 488 (C. A. 4); *United States v. Taylor's Oak Ridge Corp.*, 89 F. Supp. 28 (E. D. Tenn.); *United States v. Babcock*, 6 F. 2d 160, 161 (D. Ind.); *United States v. Prince William County*, 9 F. Supp. 219 (E. D. Va.), affirmed, 79 F. 2d 1007, certiorari denied, 297 U. S. 714; *United States v. Inaba*, 291 Fed. 416, 417 (E. D. Wash.).

The practical considerations favoring this practice were well stated in the *McIntosh* case, *supra*, as follows (57 F. 2d 577):

In cases where federal jurisdiction is exclusive, the application of section 379 [predecessor of present 28 U. S. C. 2283] would defeat its real purpose and intention (to avoid conflict between courts) because the federal case *must* go on, by reason of the supremacy of the laws of the United States, under the Constitution, and, if the state court case also goes on, confusion and possible clashes might unfortunately occur.

This brings us to a consideration of 28 U. S. C. 2283. That section provides (*supra*, p. 2) that a federal court "may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress; or where necessary in aid of its jurisdiction, or to protect or effectuate its judgment." Properly construed, this provision has no application to suits instituted by the United States since it is a general rule of construction that "statutes which in general terms divert pre-existing rights or privileges will not be applied to the sovereign without express words to that effect." *United States v. United Mine Workers*, 330 U. S. 258, 272. See also *United States v. Wittek*, 337 U. S. 346; *United States v. Herron*, 20 Wall. 251, 263; *United States v. Stevenson*, 215 U. S. 190, 197; *United States v. Wyoming*, 331 U. S. 440, 449. This rule of construction was specifically applied to 28 U. S. C. 2283 in *United States v. Taylor's Oak Ridge Corporation*, 89 F. Supp. 28, 32 (E. D. Tenn.), where the court stated: "The rule of comity which has been made into statute, 28 U. S. C. § 2283, is not applicable where the United States is complainant, for the reason that the sovereign is not included within its terms." See also *Brown v. Wright*, 137 F. 2d 484, 488 (C. A. 4). There can be no question that prior to the passage of 28 U. S. C. 2283, the courts recognized the right of the United States to prevent trial of cases involving its title behind its back through the injunctive process. See cases cited at page 37, *supra*. Since the United States is not specifically referred to in the statute, this right should not be considered as taken away.

But in any event the statute makes an exception for suits brought to protect the jurisdiction of a district court. In this case, since exclusive jurisdiction to try the issue was vested in the federal court, it is clear that an injunction was necessary to protect its jurisdiction. This would probably be considered clear merely from reading the terms of the exception but the notes of the revisers of the Judicial Code make it certain. The revisers stated that the language of 28 U. S. C. 2283 was used with the intention of "restor[ing] the basic law" as it stood theretofore. Reviser's Notes, H. Rept. No. 308, 80th Cong., 1st Sess., A-182. As the cases cited above illustrate, the basic law codified in the revision recognized this exception from the prior limitations on the injunctive power. Nor does the decision in *Amalgamated Clothing Workers v. Richman Brothers Co.*, 348 U. S. 511, now relied on by petitioner (Br. 13-15), lend the slightest support to its claim. The Court specifically found at page 515 that "No such exception had been established by judicial decision under former § 265."

Petitioner's case is pitched on the *in rem*-priority of jurisdiction doctrine,¹² but as the court of appeals

¹²The basis for this doctrine was expressed by this Court in *Kline v. Burke Construction Co.*, 260 U. S. 226, at 235.

"The rank and authority of the [federal and state] courts are equal but both courts cannot possess or control the same thing at the same time, and any attempt to do so would result in unseemly conflict. The rule, therefore, that the court first acquiring jurisdiction shall proceed without interference from a court of the other jurisdiction is a rule of right and of law based upon necessity, and where the necessity, actual or potential, does not exist, the rule does not apply."

held (R. 180), "The rule as to *in rem* actions which appellant [petitioner] invokes is predicated upon principles of comity between State and Federal Courts of concurrent jurisdiction, and it has no application here because the District Court, wherein the United States is plaintiff, has exclusive jurisdiction to determine the title of the United States to the minerals and mineral rights claimed by the appellant." Thus, it is profitless here to consider cases where the question has arisen under circumstances where the two courts have unquestioned jurisdiction and the priority may be decisive. In cases of concurrent jurisdiction, either final judgment settles the matter. Here, even if petitioner had a favorable judgment of the state court today, the United States would be entitled to an injunction by the federal court against any threat to its property rights or interference by petitioner with the present oil operations pending determination of its suit. This was recognized by this Court in *United States v. Lee*, 106 U. S. 196, 222. While petitioner (Br. 18) labels this as *dictum*, we submit that it was an important consideration in the minds of the bare majority which sustained jurisdiction in that case, and that, regardless of this, the proposition is correct.¹³

¹³ See *Carr v. United States*, 98 U. S. 433; *Cunningham v. Macon & Brunswick R. R. Co.*, 109 U. S. 446, 452; *Stanley v. Schwalby*, 162 U. S. 255, 271; *Tindal v. Wesley*, 167 U. S. 204, 223-224; *Scranton v. Wheeler*, 179 U. S. 141, 152-153; *Iron Cliffs Co. v. Negaunee Iron Co.*, 197 U. S. 463, 472-473; *McClellan v. Carland*, 217 U. S. 268, 282; *Hussey v. United States*, 222 U. S. 88, 93; *Missouri v. Fiske*, 290 U. S. 18, 29; *Wood v. Phillips*, 50 F. 2d 714, 717 (C. A. 4); *United States v. McIntosh*, 57 F. 2d 573, 578-579, 2

Nor is petitioner's contention supported by the decision in *United States v. Bank of New York & Trust Co.*, 296 U. S. 463, upon which it primarily relies. That case was carefully considered by both courts below (R. 160-162, 179-180) and found not to support petitioner's claims. The subject matter of the action was a privately owned fund constituting assets of three dissolved Russian insurance companies. The state court had in 1925 appointed a liquidator who deposited the funds in banks designated by the court and the funds were held subject to appropriate orders of that court for distribution to creditors. Eight years later, in 1933, the Soviet Government assigned its claim against the funds to the United States, and the federal government thereafter sued in the federal court to establish title to and obtain possession of the funds. This Court affirmed a dismissal upon the ground that the state court had first acquired jurisdiction and control over the entire fund and that continuation of such control was necessary to protect the rights of claimants in the state court proceeding.

F. Supp. 244, 250, 255 (E. D. Va.); *Whitehead v. Cheres*, 67 F. 2d 316 (C. A. 5); *Appalachian Electric Power Co. v. Smith*, 67 F. 2d 451, 456-458 (C. A. 4); *Corred v. Barbour*, 71 F. 2d 9, 12 (C. A. 1); *Stone v. Interstate Natural Gas Co.*, 103 F. 2d 544, 547 (C. A. 5), affirmed *per curiam*, 308 U. S. 522; *Blondet v. Hadley*, 144 F. 2d 370, 371-372 (C. A. 1); *Scranton v. Wheeler*, 57 Fed. 803, 807 (C. A. 6), reversed on another ground, 163 U. S. 703 (see 179 U. S. at 144-6); *United States v. Van Horn*, 197 Fed. 611, 615, 617 (D. Colo.); *Crane v. United States*, 44 C. Cls. 324, 354-59 affirmed *sub nom. Hussey v. United States*, 222 U. S. 88, 93; but cf. *Land v. Dollar*, 190 F. 2d 366 (C. A. D. C.), certiorari granted, 341 U. S. 737, writ dismissed, 344 U. S. 806; *Sawyer v. Dollar*, 190 F. 2d 623 (C. A. D. C.), certiorari granted, 342 U. S. 875, judgment vacated as moot, 344 U. S. 806.

The conclusion in that case was based on facts not present here. There, a true *res* was validly under the control of the state court at a time when the United States had not the slightest interest in it or claim to it, and the Government acquired no interest until eight years later, and never acquired possession. The interest the United States claimed was adverse to those of the other claimants to the fund (who were not joined as parties to the Government's suit), so that its relation to the state court suit was essentially that of a plaintiff, seeking to recover money for itself, rather than that of a defendant. See also *supra*, pp. 33-34. Here, title to and possession of the property has been in the United States since 1938, 15 years before petitioner filed its state court action, and the Government's claim of title to the minerals matured eight years before such action was instituted, and only in the federal court are all parties present.

There is no merit to petitioner's argument (Point III, Br. 35-43), that, regardless of questions of jurisdiction, the proceedings should "in any event" be stayed in the Government's federal action and the case in the state court be permitted to proceed. This is bottomed on the proposition that the construction of the state statute is a matter of state law and that if it is determined in favor of the defendants in the state case, the constitutional question will never be resolved. The fact that a question of state law may exist is, of course, no obstacle to federal jurisdiction, and the mere presence of a local question cannot, on any theory, cure a want of jurisdiction in the state court of

petitioner's action if, as both courts below have held, it is in fact a suit against the United States. If jurisdiction is lacking, there is no jurisdiction in the state court to decide any question, local or otherwise.

Moreover, the issues on the merits involve questions of federal law, not state law. The title of the United States to the minerals rests upon the interpretation and construction of its express contract with Thomas Leiter. The construction of a contract of the United States, and the title which it creates, "presents questions of federal law not controlled by the law of any State." *United States v. Alleghany County*, 322 U. S. 174, 183. See also *Clearfield Trust Co. v. United States*, 318 U. S. 363, 366-367; *Girard Trust Co. v. United States*, 149 F. 2d 872, 874 (C. A. 3); *Whitin Machine Works v. United States*, 175 F. 2d 504, 507 (C. A. 1); *United States v. Jones*, 176 F. 2d 278, 281 (C. A. 9).

Petitioner acknowledges, as it must (Br. 40-42), the holding in the *Alleghany County* case, but suggests that a contrary holding or substantial qualification of the doctrine is represented by the decision in *United States v. Standard Oil Co.*, 332 U. S. 301. The suggestion is groundless. That case did not involve a contract of the United States, and hence there was no occasion for this Court to deal with the question and it did not deal with it. The Court merely held that the wholly unrelated subject matter there involved was governed by federal law. And in the language which petitioner quotes, the Court was merely noting that in some situations the rights of

the Government might be affected by state law. But in stating that such an instance was "when it [the United States] purchases real estate from one whose title is invalid by that law in relation to another's claim," the court was not stating that the rights of the United States *vis a vis* its vendor under its contract of purchase were governed by state law, but merely that the title of the Government's vendor might turn on state law, and that if title was lacking in the vendor the United States, regardless of the meaning of its purchase agreement under federal law, acquired nothing. Here there is no question of the Government's vendor, Leiter, not having title when he contracted with the Government. Similarly, the question of *capacity* to transmit was all that was dealt with in *United States v. Fox*, 94 U. S. 315, cited by petitioner (Br. 42), and *Sunderland v. United States*, 266 U. S. 226, also cited by petitioner (Br. 43), is utterly irrelevant to this question.

The following observations of the trial court (R. 162-163) cast this case in its true perspective:

The defendant is in a poor position to urge on a court of equity that it should be allowed to continue its suit in the state court which, as has been shown, is in effect a suit against the United States. When Thomas Leiter deeded this property in Plaquemines Parish to the United States for valuable consideration, he was bound to know that if any controversy arose between him and the United States involving that deed, he could not sue the United States without its consent except for a money judg-

ment in the Court of Claims under the Tucker Act. He was bound to know that he was dealing with a sovereign which, under the law, can choose the court in which to litigate with private citizens. Knowing these facts, neither he nor his successor in title should ask a court of equity to protect them while they sue the United States "behind its back" in a state court where it cannot be made a party.

This is not a case in which the United States is standing on its immunity from suit to avoid a trial of the issue of its rights to the minerals involved. Its suit in the federal district court is one to determine the case on its merits and the injunction sought against the state court action was prayed for to preserve the *status quo* pending that determination. Under these circumstances, petitioner is in a weak position in seeking to determine federal rights in a state court where the United States is not only not a party, but where the United States is powerless to intervene in order to protect its rights.

CONCLUSION

For the foregoing reasons, it is submitted that the judgment below should be affirmed.

Respectfully,

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OCTOBER 1956.

APPENDIX

The pertinent provisions of the mineral reservation in the contract of sale and purchase dated March 14, 1935, between the executors and trustees of the Joseph Leiter Estate and the United States, and the resultant deed of December 21, 1938, from Thomas Leiter to the United States, are as follows:

The Vendor reserves from this sale the right to mine and remove, or to grant to others the right to mine and remove, all oil, gas and other valuable minerals which may be deposited in or under said lands, and to remove any oil, gas or other valuable minerals from the premises; the right to enter upon said lands at any time for the purpose of mining and removing said oil, gas and minerals, said right, subject to the conditions hereinafter set forth, to expire April 1, 1945, it being understood, however, that the vendors will pay to the United States of America, 5% of the gross proceeds received by them as royalties or otherwise from all oil or minerals so removed from in or under the aforedescribed lands, until such time as the vendors shall have paid to the United States of America, the sum of \$25,000, being the purchase price paid by said United States of America for the aforedescribed properties.

Provided, that if at the termination of the ten (10) year period of reservation, it is found that such minerals, oil and gas are being operated and have been operated for an average of at least 50 days per year during the preceding three (3) year period to commercial advantage, then, and in that event, the said right to mine shall be extended for a further period of five

(5) years, but that the right so extended shall be limited to an area of twenty-five acres of land around each well or mine producing, and each well or mine being drilled or developed at time of first extension, to-wit; April 1, 1945.

Provided, that this said right to mine as previously stated shall be further extended from time to time for periods of five (5) years whenever operation during the preceding five (5) year period has been for an average of 50 days per year during this period, and

Provided that at the termination of the ten (10) year period of reservation, if not extended, or at the termination of any extended period in case the operation has not been carried on for the number of days stated, the right to mine shall terminate, and complete fee in the land become vested in the United States.

The reservation of the oil and mineral rights herein made for the original period of ten (10) years and for any extended period or periods in accordance with the above provisions shall not be affected by any subsequent conveyance of all or any of the aforementioned properties by the United States of America, but said mineral rights shall, subject to the conditions above set forth, remain vested in the vendors.

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U.S. Clerk

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 26

THE LEITER MINERALS, INC.,

Petitioner,

versus

UNITED STATES OF AMERICA, ET AL.,

Respondents.

**On Writ of Certiorari to the United States Court of
Appeals for the Fifth Circuit.**

**PETITION OF THE CALIFORNIA COMPANY AND
ALLEN L. LOBRANO FOR REHEARING.**

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1956.

No. 26.

THE LETTER MINERALS, INC.,

Petitioner,

versus

UNITED STATES OF AMERICA, ET AL.,

Respondents.

**On Writ of Certiorari to the United States Court of
Appeals for the Fifth Circuit.**

**PETITION OF THE CALIFORNIA COMPANY AND
ALLEN L. LOBRANO FOR REHEARING.**

The California Company and Allen L. Lobrano respectfully petition the Court to eliminate its modification whereby further proceedings in the United States Courts have been deferred pending a declaratory judgment, if obtainable, by the Supreme Court of Louisiana as to whether Act 315 of 1940 purports to strike down the fixed term provision of mineral reservations against the United States in antecedent United States contracts. The following grounds are relied upon:

1. Louisiana Act 315 of 1940 is directed against the United States of America and affects none other. Any

proceeding in the State Court to interpret this statute "with finality" would therefore be a suit to which the United States is an indispensable party and one over which the State Court cannot have jurisdiction. The Louisiana Supreme Court has, in *Whitney National Bank of New Orleans vs. Little Creek Oil Co.*, 212 La. 949, 33 So. (2d) 693, already declined to consider the constitutionality of Act 315 of 1940 for the reason that:

"... the United States is the only party which has an interest in urging the unconstitutionality of the statute, and the judgment wherein the lower court found the statute to be applicable and constitutional and provided that nothing therein was to be construed as res judicata as against the United States, was improper without the government being a party hereto," 212 La. at pp. 963, 964, 33 So. (2d) at p. 698.

2. Since the pending suit in Plaquemines Parish to adjudicate the title of the United States is held to be a suit against the United States, the suggested declaratory judgment proceeding in the State Court, which is a step in the determination process, cannot be any the less a suit against the United States.

3. The interpretation sought of the Louisiana Supreme Court is whether Act 315 of 1940 is intended to apply "when the parties themselves have contracted for a reservation of specific duration". The relevancy and constitutionality of the Louisiana Supreme Court's interpretation are necessarily reserved by this Court for ultimate determination in the Federal Courts. There is grave doubt that the power exists to render such an advisory opinion.

4. Interpretation of Act 315 of 1940 by the Louisiana Supreme Court cannot affect the outcome of the litigation in the United States Courts. If the United States is correct in its argument that the statute does not apply to a mineral reservation with a specific termination date, petitioner has no claim to the property. If, on the other hand, the Louisiana Supreme Court were to adopt petitioner's argument that the statute did purport to strike down and write out the April 1st, 1945 expiration date, petitioner could not be aided by such an arbitrary attempt to divest previously existing property rights of the United States. Whichever be the interpretation, the status of the title of the United States would be unaffected. Clearing of the title of the United States to this important property ought not to be deferred by an unavailing step.

WHEREFORE, The California Company and Allen L. Lobrano pray that this Court eliminate its modification of the judgment of the Court of Appeals and that the judgment of the Court of Appeals be affirmed in all respects.

Respectfully submitted,

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CERTIFICATE

It is hereby certified that the foregoing petition for rehearing is presented in good faith and not for delay.

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